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Homer D. Bronson Company and United Automobile, Aerospace & Agricultural Implement Workers of America, Region 9A, AFL-CIO and Jozef Odorczuk. Cases 34-CA-9499, 34-CA-9514, 34-CA-9829, and 34-CA-9748

March 16, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On October 10, 2002, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent and the General Counsel each filed exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions¹ and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order as modified.⁴

¹ No exceptions were filed to the judge's dismissal of allegations that the Respondent violated Sec. 8(a)(1) by discharging Supervisor Jozef Odorczuk for refusing to commit an unfair labor practice, and by the following alleged conduct directed at employee Viterbo (Tony) Pimentel: (1) promising him increased benefits; (2) imposing more onerous working conditions on him; (3) impliedly promising him a job promotion; and (4) threatening him with loss of light duty work, plant closure, and other unspecified reprisals in response to his union activity. In addition, there is no exception to the judge's dismissal of the allegation that Pimentel's discharge violated Sec. 8(a)(4).

The General Counsel excepts to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) when its president of manufacturing, Joseph Blancato, promised employee Jaroslav Ogniewski improved benefits if Ogniewski renounced support for the Union. We find it unnecessary to pass on this allegation because, as stated in fn. 3, infra, we agree with the judge that Blancato impliedly promised employee Dale Schaffer improved benefits in violation of Sec. 8(a)(1). Therefore, an additional 8(a)(1) finding regarding Blancato's alleged promise to Ogniewski would be cumulative and would not affect the remedy.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that there is no Sec. 10(b) bar to the orally amended complaint allegation that the Respondent violated Sec. 8(a)(1) by delaying wage increases to some employees until May and June 2001, we do not rely on his analysis under *Redd-I*, *Inc.*, 290 NLRB 1115 (1988). Rather, we find that the amended allegation was sufficiently encompassed by the charge that was timely filed on September 11, 2001.

1. Threats of Plant Closure

Facts

The judge found, and we agree, that the Respondent—in campaign speeches and posters—unlawfully threatened employees with plant closure and job loss if they chose union representation. In adopting the judge's findings that this conduct violated Section 8(a)(1), we rely particularly on speeches made by senior managers of the Respondent on November 22 and December 5, 2000.

The Respondent conducted about 10 meetings with employees during the organizing campaign. In a November 22 meeting, Charles Spencer, president of the Respondent's Auto Group, spoke to employees about the Respondent's history. Spencer prefaced his remarks by telling employees that "those who cannot read history are bound to repeat it." He then told the employees that at one time the company had manufacturing plants in Chicago and Beacon Falls, Connecticut, but—after repeated strikes by the Steelworkers Union, which represented the employees—both plants closed and the Beacon Falls operation was relocated to its present Winsted, Connecticut site. Spencer reminded employees that "Winsted of course has always been a non-union facility." He concluded his speech by stating that the "history of [the Respondent] and unions has not been a good one," and suggested that employees ask themselves, "will this Union help us to be responsive, flexible and competitive as required by our customers? Or will this Union do to this

³ We agree with the judge that Blancato's statement to Pimentel, that he knew Pimentel was talking with employees about the Union, violated Sec. 8(a)(1) by creating the impression that employees' union activities were under surveillance. Accordingly, we find it unnecessary to pass on the judge's further findings that Blancato's statement to employee Roberta Tyree, and Supervisor John Kisiel's statement to employee Carol Ann Winegar, also violated Sec. 8(a)(1) because they created the impression that employees' union activities were under surveillance. These additional findings would be cumulative and would not affect the remedy. Member Walsh agrees not to pass on Kisiel's statement to Winegar because it would be cumulative, but he would adopt the judge's finding that Blancato's statement to Tyree violated Sec. 8(a)(1).

For the same reason, we need not pass on the judge's finding that Blancato impliedly promised Tyree benefits in violation of Sec. 8(a)(1), because we agree with the judge that Blancato's statement to employee Schaffer constituted an implied promise of benefits violation. Finally, because we agree with the judge that Blancato and Supervisor Kisiel violated Sec. 8(a)(1) and (3) by telling Tyree, Schaffer, and Winegar that they were prohibited from discussing the Union and from soliciting union support during company time, we find it unnecessary to pass on the judge's additional finding that Plant Manager David Abraham instructed Pimentel not to speak to employees about the Union during company time. This additional finding would be cumulative and would not affect the remedy.

⁴ We shall modify the judge's recommended Order to conform to the Board's standard remedial language. We shall also issue a new notice that conforms to the Order.

new Homer Bronson what it did to the old Homer Bronson."

Spencer and Blancato, the Respondent's president of manufacturing, both spoke at the December 5 employee meeting. In his speech, Blancato summarized the Union's recent "strike history" at several area companies. He stated that the Union's actions had resulted in some employees losing their jobs through subcontracting or plant closure. Blancato told employees that although "strikes are not inevitable" after a union is selected as a bargaining representative, "where there are unions . . . there are strikes." He added that the union seeking to organize the Respondent's employees was "strike Spencer, during his portion of the meeting, presented a slide show that included a chart purporting to "show that over the last 15 years, 13 companies have closed, putting 4141 employees who used to be represented by the UAW out of work." Spencer told the employees that the closings showed that "not only can the Auto Workers Union not guarantee job security but, in fact, the opposite may be true."

Employee Schaffer testified that, in response to Blancato's litany of union-represented companies that had closed, he sought clarification by asking whether Blancato was "saying that we will move or close if the Union comes in." Blancato replied, "no, I'm saying we could move or we could close if the union comes in."

During the election campaign, in addition to delivering those speeches, the Respondent displayed posters throughout the plant highlighting 5 of the 13 closed companies discussed in the December 5 slide show. The posters contained the statement, "These are just a *few* examples of plants where the UAW *used to* represent employees," and posed the question: "Is this what the UAW calls job security?"

Analysis

The law has been well settled since the Supreme Court's 1969 decision in *Gissel Packing*⁶ that an employer is free to predict the economic consequences it foresees from unionization, so long as the prediction is

carefully phrased on the basis of objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on

available facts but a threat of retaliation . . . without the protection of the First Amendment.

395 U.S. 595, 618. Absent the necessary objective facts, employer predictions of adverse consequences arising from unionization are not protected by Section 8(c); rather, they constitute threats that violate Section 8(a)(1).

The judge found that the Respondent's speeches and posters contravened Gissel's guidelines in two respects. First, they contained no objective facts to support the Respondent's clear implication that the referenced plant closings were caused solely by the fact that the "strike happy" UAW represented those employees. Second, the Respondent told its employees that "where there are unions, there are strikes," and that two of its own plants had closed following a series of strikes. Through these messages, the judge found that the Respondent created the impression in the minds of employees that there was an "inevitable linkage between unionization and job loss." The judge ultimately found that employees would reasonably infer from the Respondent's speeches and posters that "a vote for the Union will threaten [the employees'] future employment." Accordingly, the judge concluded that the Respondent violated Section 8(a)(1) by implicitly threatening employees with plant closing and job loss if they voted for union representation.

We agree with the judge that the Respondent's speeches and posters, taken as a whole, conveyed unlawful threats of adverse consequences from unionization, rather than lawful, fact-based predictions of economic consequences beyond the Respondent's control. We also find that *Stanadyne Automotive Corp.*, 345 NLRB No. 6 (2005), and *Smithfield Foods, Inc.*, 347 NLRB No. 109 (2006), on which the dissent relies, are distinguishable in several respects. Although the employer's cam-

⁵ In fact the "strike happy" union referred to by Blancato was Local 376 of the United Auto Workers. The Petitioner in this case is Region 9A of the United Auto Workers.

⁶ NLRB v. Gissel Packing Co., 395 U.S. 575 (1969).

⁷ We disagree with the judge's statement that the Board's decisions in *Sheraton Hotel Waterbury*, 312 NLRB 304 (1993), enfd. in part 31 F.3d 79 (2d Cir. 1994), and *EDP Medical Computer Systems*, 284 NLRB 1232 (1987), "are of limited precedential value" because, in his view, it was unclear whether the 8(a)(1) allegations in those cases regarding employer campaign posters were presented to the Board. In each of those cases, the Board affirmed the judge's finding that the employer did not violate Sec. 8(a)(1) by displaying poster illustrations of unionized companies that had closed, accompanied by the question, in *Sheraton*, "Is this union job security," and in *EDP*, "Is this job security?" Nevertheless, Members Liebman and Walsh find that the Respondent's posters constituted unlawful threats of plant closure when considered in conjunction with the speeches to employees discussed below

Chairman Battista finds that the Respondent's posters, which are nearly identical to those in *Sheraton* and *EDP*, are lawful for the reasons explained in those cases and, further, as explained below, that the speeches to employees did not violate Sec. 8(a)(1).

⁸ Member Liebman dissented in *Stanadyne* and *Smithfield* on this issue and she adheres to those dissents. Member Walsh did not participate in those cases but he agrees with Member Liebman. However,

paign speeches and posters in Stanadyne also referred to closed facilities where employees had been represented by the petitioning union, the Board majority in that case emphasized that the employer "repeatedly made clear" and "said several times" that it was not making predictions. 345 NLRB No. 6, slip op. at 5, 6. Similarly, in Smithfield, the Board majority found it significant that the employer several times "expressly disclaimed any certainty about the connection between the previous closures" and the union. 347 NLRB No. 109, slip op. at 3. Here, by contrast, Spencer, the president of the Respondent's Auto Group, told employees on November 22 that two of its facilities had closed because the Respondent was "fed up and tired of strikes," and that employees should ask themselves, "will this Union do to this new [company] what it did to the old [company]." (Emphasis added.) Through those statements, the Respondent indicated to employees that strikes by "this Union" were the cause for the closure of its Chicago and Beacon Falls facilities. The Respondent did not, moreover, "repeatedly" emphasize that it was not making predictions for the future. 10 Rather, by reminding employees in this speech of the adage that "those who cannot read history are bound to repeat it," a statement missing from the speeches in Stanadyne and Smithfield, the Respondent left no doubt in employees' minds that, in the event of another series of strikes, history would repeat itself, and the Respondent would, on its own initiative, choose to close or move. The Respondent's labeling the Union "strike happy" was a way of emphasizing that, if the employees elected representation, it would inevitably lead to plant closure and resulting job loss.

Stanadyne and Smithfield are further distinguishable from this case by virtue of Spencer's remarks on December 5. Spencer stated that, not only was the Union unable to guarantee job security, as evidenced by the closure of numerous named companies whose employees it represented, but that those closures demonstrated that selecting the Union might actually "guarantee" the loss

of jobs. None of the statements made in *Stanadyne* or *Smithfield* so clearly threatened job loss. 11

Finally, in *Stanadyne* and *Smithfield* there was no employee-management interchange like that between employee Schaffer and Blancato, the Respondent's president of manufacturing, in which Blancato, in response to Schaffer's question about the possibility of moving or closing if the Union became the employees' bargaining representative, stated that it "could" happen. We agree with the judge that Schaeffer's question presented Blancato with "an opportunity to disavow any implication of a threat," but that Blancato instead used the question as an opportunity to reiterate an implied threat of plant closure if employees chose union representation. ¹² Thus, we find the totality of the speeches and posters in the instant case to be qualitatively more coercive than those in *Stanadyne* and *Smithfield*.

Contrary to the dissent, we find that the Respondent was not merely informing employees of the potential negative effects of unionization based on any objective facts. Rather, the speeches implied that a vote for the Union might cause the Respondent to close "on its own initiative for reasons unrelated to economic necessities." *Gissel*, supra, 395 U.S. at 618. The Supreme Court has found such statements to be threats of retaliation unprotected by the First Amendment.

In sum, we find that the Respondent's speeches, rather than containing reasonable, fact-based predictions of the consequences of unionization, constituted threats of plant closure in retaliation for the unionization of its facility. Accordingly, we conclude that the Respondent violated Section 8(a)(1). 13

although Members Liebman and Walsh conclude that *Stanadyne* and *Smithfield* were wrongly decided, they nevertheless find, as discussed below, that those cases are distinguishable.

⁹ In fact, the Steelworkers, not the Auto Workers, represented employees at those two facilities.

The record indicates that Blancato, during only one of seven presentations to employees, may have said that strikes were "not inevitable." (This was according to his notes, which he admittedly did not read verbatim.) On the same occasion, however, his visual display categorically stated that "[w]here there are unions... there are strikes," and he said nothing else at any time to disclaim that he was predicting what would happen if employees voted for the Union. Spencer never made any such disclaimer at any time.

¹¹ See *Wausau Steel Corp. v. NLRB*, 377 F.2d 369, 372 (7th Cir. 1967) ("one who engages in 'brinksmanship' may easily overstep and tumble into the brink," quoted with approval in *Gissel*, supra, 395 U.S. at 620.

¹² See, e.g., *Tellepsen Pipeline Services Co.*, 335 NLRB 1232, 1233–1234 (2001), enfd. in relevant part 320 F.3d 554 (5th Cir. 2003).

¹³ Contrary to the judge and his colleagues, Chairman Battista does not find this violation. In his view, Sec. 8(c) permits an employer to cite to its employees plant closings and strikes at other plants where a union was the bargaining representative. *Smithfield Foods, Inc.*, 347 NLRB No. 109, slip op. at 2 (2006); *Stanadyne*, 345 NLRB No. 6, slip op. at 5.

Here, the Chairman finds that there is nothing in the Respondent's campaign posters or speeches indicating that it would penalize employees for choosing union representation by closing its facility. Rather, its communications accurately recounted that, in recent years, numerous unionized facilities, including two of its own, had closed. The Respondent correctly pointed out that most of the closed plants were in Connecticut, where its facility was located, and that all of the closed companies employed work forces that had been represented by the same labor organization whose affiliate was now seeking to represent its employees—the UAW.

The Chairman further finds that, as in *Stanadyne*, these were undisputed facts that the Respondent lawfully could bring to the attention of

2. Remedy

Although the judge found that the Respondent's unfair labor practices were of the "type that have been found sufficiently serious to support a bargaining order" under *Gissel Packing*, he declined to recommend such an order. Instead, the judge found that the Board's traditional remedies, supplemented by a special remedy discussed below, were sufficient to erase the effects of the violations. The General Counsel excepts, arguing that a *Gissel* bargaining order is warranted.

For the following reason only, we agree with the judge that a Gissel bargaining order is not appropriate here. In Smithfield Foods, Inc., supra, 347 NLRB No. 109, slip op. at 8, we concluded that, because of the delay in processing that case, "a Gissel bargaining order would likely be unenforceable." See also Wallace International de Puerto Rico, 328 NLRB 29 (1999).¹⁴ Here, too, given the length of time spent in the processing of this case, it is doubtful that a Gissel bargaining order would be en-The unfair labor practices occurred in 2000– 2001, about 6 years ago. The delay at the Board following issuance of the judge's decision exceeds that in Wal*lace*, and the 6 years that have elapsed since the commission of most of the unfair labor practices approaches the 7-year span in Smithfield Foods between the unlawful conduct and issuance of the Board's decision.

We believe that there are several explanations for the delay, including the number and complexity of the is-

its employees so that they were aware of the "potential negative effects of their upcoming vote." 345 NLRB No. 6, slip op. at 5. Here, as in *Stanadyne*, the Respondent simply cited history and urged employees to consider what might happen if they selected the Union. In doing so, the Respondent made no prediction that if they chose union representation, the inexorable consequence was plant closure.

It is for this reason that Chairman Battista disagrees with his colleagues' attempt to distinguish Stanadyne. In none of the statements on which they rely did the Respondent state what would happen were its facility unionized. The Respondent was asked the specific question of whether the plant "will close" if the Union was selected. The Respondent replied that the plant involved herein "could close" if the Union became the representative. Further, the Respondent did not say that the mere selection of the Union could result in closure. Rather, the Respondent made it clear that a strike could cause a closure. And, the Respondent explained a strike is "not inevitable." In addition, the Respondent simply asked the question, "will this Union do to this new Homer Bronson what it did to the old Homer Bronson?" Finally, as to the "guarantee" given by the Respondent, the statement was the truthful statement that a union cannot guarantee job security, and "may" bring about a loss of job security. In sum, the Respondent was not saying that it would close to retaliate against selection of the Union. Rather, the Respondent, citing recent history, was saying that a strike "could" lead to the economic consequences of plant closure.

Accordingly, the Chairman would reverse the judge's finding that the Respondent threatened plant closure and dismiss this aspect of the complaint.

¹⁴ In *Wallace*, the Board declined to issue a *Gissel* bargaining order because of the delay in the processing of that case.

sues, the length of the record, and the turnover and vacancies on the Board throughout the period. We recognize, however, that a reviewing court could reasonably conclude that the delay was unjustified. Accordingly, as in *Smithfield Foods* and *Wallace*, "rather than possibly engender further litigation and delay over the propriety of a *Gissel* bargaining order," we shall primarily rely on the Board's traditional remedies to erase the effects of the Respondent's unfair labor practices. ¹⁶

Nevertheless, we agree with the judge that a special remedy is warranted in order to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices. Specifically, we find that the Respondent's unfair labor practices are sufficiently serious and widespread to warrant having the attached notice to employees read aloud to the employees, so that they "will fully perceive that the Respondent and its managers are bound by the requirements of the Act." Federated Logistics & Operations, 340 NLRB 255, 258 (2003), affd. 400 F.3d 920, 929–930 (D.C. Cir. 2005). See also McAllister Towing & Transportation Co., 341 NLRB 394, 400 (2004), enfd. 156 Fed.Appx. 386 (2d Cir. 2005); Blockbuster Pavilion, 331 NLRB 1274, 1276 (2000). The reading of the notice "will ensure that the important information set forth in the notice is disseminated to all employees, including those who do not consult the Respondent's bulletin boards." Federated Logistics, supra, 340 NLRB at 258, quoting Excel Case Ready, 334 NLRB 4, 5 (2001). The "public reading of the notice is an 'effective but moderate way to let in a warming wind of information and, more important, reassurance."" McAllister, 341 NLRB at 400.

The notice must be read by the Respondent's president of manufacturing, Blancato (who was directly and personally involved in many of the violations) or, at the Respondent's option, by a Board agent in the presence of Blancato. As we stated in *Federated Logistics*, the "presence of a responsible management official when a government official informs employees of the terms of [the] remedial order is not demeaning, but only a minimal acknowledgment of the obligations that have been imposed by law." 340 NLRB at 258 fn. 12. The employees in this case are "entitled to at least that much assurance that their organizational rights will be respected in the future." Id. 17

¹⁵ Smithfield Foods, supra, slip op. at 8.

¹⁶ Because a *Gissel* remedy is not being imposed, the Respondent's motion to reopen the record in order to offer evidence of changed circumstances is moot.

¹⁷ The Respondent shall also provide for Spanish and Polish interpreters to be present to translate the notice as it is read to employees.

Consistent with his dissent in Federated Logistics & Operations, 340 NLRB 255, 261 (2003), Chairman Battista would not impose this

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge, as modified below, and orders that the Respondent, Homer D. Bronson Company, Winsted, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

- 1. Substitute the following for paragraphs 2(e) and 2(f).
- "(e) Make Roberta Tyree whole for any loss of earnings suffered as a result of the discriminatory denial of overtime, which began on or about October 10, 2000, in the manner set forth in the remedy section of the judge's decision.
- (f) Make whole the employees who were denied wage increases in fall 2000 because of the union campaign, as set forth in the remedy section of the judge's decision."
 - 2. Substitute the following for paragraph 2(i).

"Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees by the Respondent's president of manufacturing, Joseph Blancato or, at the Respondent's option, by a Board agent in Blancato's presence, with translation available for Spanish- and Polish-speaking employees."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. March 16, 2007

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

extraordinary remedy. In his view, the Respondent is not a recidivist and the violations it committed were not so egregious as to render insufficient the Board's traditional cease and desist and notice posting remedies

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate and maintain overly broad and discriminatory solicitation and distribution rules, including rules prohibiting employees from discussing the Union at work.

WE WILL NOT create the impression that we are watching your activities on behalf of United Automobile, Aerospace & Agricultural Implement Workers of America, Region 9A, AFL–CIO (the Union), or any other union

WE WILL NOT threaten you with job loss, the closing of our facility, or other unspecified reprisals if you support the Union.

WE WILL NOT threaten to and withhold wage increases from you because you have sought union representation.

WE WILL NOT impliedly promise you raises and improved benefits to get you to stop supporting the Union.

WE WILL NOT give you wage increases in order to convince you not to support the Union.

WE WILL NOT take away your overtime or light duty work because you support the Union.

WE WILL NOT fire you because you support the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Federal labor law.

WE WILL rescind the overly broad and discriminatory rules promulgated during the union campaign that prohibit employees from engaging in union solicitation and distribution and from discussing the Union at work.

WE WILL, within 14 days from the date of the Board's Order, offer Viterbo (Tony) Pimentel full reinstatement to his former light duty job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Viterbo (Tony) Pimentel whole for any wages and benefits he lost because we denied him light duty work and fired him.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Pimentel's unlawful discharge, and WE WILL, within 3 days thereaf-

ter, notify Pimentel in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL make Roberta Tyree whole for any wages she lost because we denied her overtime on or after October 10, 2000, plus interest.

WE WILL make whole those of you who lost wages because we held back on giving you your wage increases during the union campaign, plus interest.

HOMER D. BRONSON COMPANY

Terri A. Craig, Esq. and Thomas E. Quigley, Esq., for the General Counsel.

Edward F. O'Donnell Jr., Esq. and Nicholas J. Grello, Esq. (Siegel, O'Connor, Zangari, O'Donnell & Beck), for the Respondent.

Thomas W. Meiklejohn, Esq. (Livingston, Adler, Pulda, Meiklejohn & Kelly), for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. I heard this case in Hartford, Connecticut, on December 3, 4, 5, and 6, 2001, January 7, 8, 9, and 10, and February 14, 2002. The charges in Cases 34-CA-9499 and 34-CA-9514 were filed by United Automobile, Aerospace & Agricultural Implement Workers of America, Region 9A, AFL-CIO, the Union, on December 1 and 13, 2000, respectively. 1 Jozef Odorczuk, an individual, filed the charge in Case 34-CA-9748 on July 3, 2001. An amended consolidated complaint issued, based upon these charges and amended charges, on August 22, 2001.² On September 11, 2001, the Union filed a new charge, in Case 34– CA-9829, which it amended on November 14, 2001. Based upon this amended charge, a complaint was issued on November 15, 2001. The amended consolidated complaint and the new complaint were further consolidated by order dated November 15, 2001. The General Counsel further amended the complaints several times at the hearing.³

The complaints, as amended, allege that Homer D. Bronson Company (he Respondent) violated Section 8(a)(1) of the Act, through various supervisors, by threatening employees, promising and granting benefits to employees, making statements to employees that created the impression of surveillance and suggested that union representation would be futile, promulgating and discriminatorily enforcing rules that unlawfully restricted

employees' right to engage in union activities, and by discharging its supervisor, Odorczuk, because he refused to commit unfair labor practices. The complaints allege further that the Respondent violated Section 8(a)(1) and (3) of the Act by denying overtime to employee Roberta Tyree and denying light-duty work to employee Viterbo (Tony) Pimentel. The Respondent's subsequent termination of Pimentel is alleged as a violation of Section 8(a)(1), (3), and (4) of the Act. As a remedy for these alleged unfair labor practices, the General Counsel seeks a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The General Counsel alleges that the Respondent's grant of benefits also violated Section 8(a)(1) and (5) of the Act if a bargaining order is warranted.

The Respondent filed its answers to the complaints on September 4 and November 28, 2001, respectively. The Respondent amended its answers at the hearing in response to the amendments to the complaints. In its answers, as amended, the Respondent denied that it committed any of the alleged unfair labor practices or otherwise violated the Act. The Respondent asserted affirmatively that a majority of its employees had expressed their desire not to be represented by the Union. The Respondent also asserted that several allegations in the complaints, as amended, were barred by Section 10(b) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, manufactures automobile hinges and related products at its facility in Winsted, Connecticut, where it annually purchases and receives goods valued in excess of \$50,000 directly from points outside the State of Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As noted above, the Respondent is a manufacturer of parts used primarily in the automobile industry. Charlie Spencer was the president of the Respondent's auto group in the summer 2000. Joseph Blancato was the vice president of manufacturing. In September, Blancato was promoted to president. In the fall of 2000, the Respondent employed approximately 78 production and maintenance employees at its Winsted manufacturing facility. David Abraham was the Respondent's plant manager at the time. Odorczuk and Derek Ewing were the first-shift supervisors and John Kisiel was the Respondent's supervisor on second and third shifts. The Respondent has admitted that Spencer, Blancato, Abraham, Odorczuk, Ewing, and Kisiel were its supervisors and agents within the meaning of the Act at all times material to the complaint.

¹ The Union amended its charge in Case 34–CA–9499 three times, on December 14, 2000, January 8 and March 22, 2001.

² A consolidated complaint had previously issued in Cases 34–CA–9499 and 34–CA–9514 on June 18, 2001. The allegations of that complaint were incorporated in the amended consolidated complaint that issued on August 22, 2001.

³ During a hiatus in the hearing, the General Counsel issued a second amended consolidated complaint in Cases. 34–CA–9499, 34–CA–9514, and 34–CA–9748 that incorporated all prior amendments that had been approved at the hearing. The Respondent filed an answer to this complaint on December 26, 2001.

⁴ See fn. 3 above.

⁵ All dates are in 2000, unless otherwise indicated.

In early September, Dale Schaffer, an employee of the Respondent, contacted the Union about representing the Respondent's employees. Donna Becotte, an organizer on the Union's staff, met with Schaffer and soon thereafter, an organizing drive commenced. Employees first signed a petition authorizing the Union to represent them at a meeting at the Log House Restaurant in Winsted, Connecticut, on October 5.6 The Union filed a representation petition with the Board's Regional Office in Hartford on November 3. The Union filed with this petition, as its showing of interest, an 11 page union authorization petition bearing 48 signatures. On November 14, the Respondent and the Union signed a Stipulated Election Agreement setting December 14 as the date on which employees could vote whether to be represented by the Union. That election was never held because the Union requested, based on the instant unfair labor practice charges, that further processing of its petition be held in abevance.

The General Counsel alleges that the Respondent engaged in an unlawful campaign to defeat the Union in October and November and that its unlawful conduct continued after the election was canceled. The General Counsel argues that the Respondent's unfair labor practices were sufficiently egregious to have destroyed the laboratory conditions necessary to conduct an election and that the Board's traditional remedies will not cure the effects of these unfair labor practices. Under the General Counsel's view of the case, the only meaningful remedy is a bargaining order based upon a card majority obtained by the Union before the Respondent's unlawful campaign had its destructive effect. The Respondent counters that the only evidence that it committed the alleged unfair labor practices is the testimony of witnesses who are not credible and that company records demonstrate that it did not grant benefits or engage in any other discriminatory conduct in response to the Union's organizing campaign. The Respondent argues further that, even if the General Counsel can prove that unfair labor practices were committed, a bargaining order is not the appropriate remedy here because a majority of employees have already indicated to the Respondent that they do not want the Union to represent them. The Respondent contends that the Board's traditional remedies are more than adequate to cure the lingering effects of any unfair labor practices and that a Board-conducted election is the best way to determine the true wishes of the employees.

A. The Evidence

1. The October 5 union meeting

Becotte, Schaffer, and several other witnesses testified for the General Counsel regarding the October 5 meeting at the Log House Restaurant. All employees who attended this meeting signed a sheet when they entered the room. This sign-in sheet, which is in evidence, contains 28 signatures. Pimentel testified that all but one of the individuals whose signature appears on the sheet were at the meeting. According to Pimentel, employee Jaroslaw Ogniewski was not at the meeting, but his mother, Wladyslawa Ogniewska, was and she signed his name on the sign-in sheet. The signatures of both Ogniewskis appear to be the handwriting of the same individual, corroborating Pimentel's testimony in this regard.

All of the witnesses who were at the meeting recalled that Becotte spoke on behalf of the Union. Although there are some variations in the recollections of the individual employees, which is understandable in light of the passage of time, all were consistent that Becotte discussed the advantages of union representation and described the process for obtaining such representation. These witnesses also recalled that a good portion of the meeting was consumed by the employees themselves voicing their complaints and the problems they were having at work. One of the chief complaints expressed was that many employees had not received a wage increase in a long time.

Toward the end of the meeting, Becotte distributed the petition and told the employees that they would have to sign it if they wanted the Union to represent them. The "petition" consists of 11 pages, each with the following statement:

WE ARE THE UNION!

We the undersigned employees of Homer Bronson⁷ authorize the United Automobile, Aerospace and Agricultural Implement Workers of America, UAW to represent us in collective bargaining. We also authorize the UAW to use our names and this petition to show our support for the union.

Each page also contains 11 boxes where employees can fill in their name and other identifying information, and sign, and date the petition. The following statement also appears at the bottom of each page:

It is the policy of the UAW to waive initiation fees for ALL employees who join the union before thirty (30) days after the signing of an initial collective-bargaining agreement.

Although some witnesses testified, on cross-examination, that Becotte said that the petition would be used to get an election, Becotte and the majority of witnesses who were at the meeting recalled that she mentioned an election as only one means to achieve representation. Schaffer, for example, recalled that Becotte told the employees that the Respondent could recognize the Union on the basis of the petition, but that it was more likely that the employer would refuse to recognize the Union and an election would be held. This is consistent with Becotte's testimony.

Each of the employees who testified authenticated their own signature on the petition. In addition, Pimentel testified that he observed most of the other employees who were at the meeting sign the petition. Schaffer similarly testified that he observed others sign the petition at the meeting, but he was unable to recall specifically which signatures he observed. Dixon testified that he saw three employees who were sitting at his table sign

⁶ The Union used this format, rather than the individual union authorization card traditionally used, to gauge employees' desire for union representation.

 $^{^{7}\,\}mathrm{The}$ name of the Respondent is handwritten in a blank space on the preprinted form.

[§] The signatures of Schaffer, Pimentel, Tyree, Carol Ann Winegar, Michael Dixon, and Lee Sochon were authenticated in this manner.

the petition. These three signatures appear on the same page as that of Dixon. Sochon testified that he saw Robert Grundwalski, who was sitting next to him, sign the petition. A review of the 11 petition sheets in evidence shows that 23 signatures are dated October 5, the date of this meeting.

According to Becotte and Schaffer, a handful of employees volunteered at the October 5 meeting to form the organizing committee. These employees were given petition sheets to use to obtain signatures from other employees. Pimentel was one of the employees who took blank petitions. Pimentel identified all the signatures on the 9th and 11th pages of the petition—a total of 14—as those he obtained by visiting employees in their homes. ¹⁰ All but two of the signatures he obtained are from Hispanic employees, many with common surnames. Pimentel testified that, when soliciting employees to sign the petition, he told the employees, "we need something different. We don't have raise. We have to sign it. We needed the Union represent us." According to Pimentel, he gave one of the sheets to Red Moran, the Union's staff organizer, and the other to coworker Schaffer.

Roberta Tyree testified that she obtained the signature of employee Victoria Preato, whose name appears on the first page of the petition. Tyree credibly testified that another employee approached her at work and told Tyree that Preato wanted to sign the union petition. Tyree, who was a member of the organizing committee, got a petition from Henry Archambault, another member of the organizing committee and went out to her car with Preato. After Preato signed the petition, Tyree gave it back to Archambault. Although Preato's signature is undated, Tyree testified that Preato signed the petition on November 2.

Schaffer testified that he solicited a number of signatures on the petitions after the October 5 meeting, but he could not recall the names of any employees he solicited and was unable to authenticate any signature other than his own. Red Moran, the Union's organizer who joined the campaign in mid-October, testified that he obtained two signatures on the petition during home visits with other members of the committee. According to Moran, he and Schaffer obtained Kurt Parsons' signature on October 21 when they visited Parsons' home. This is the same signature that Pimentel testified he obtained from Parsons in downtown Winsted when he saw Parsons riding his motorcycle. Moran testified that he also obtained the signature of Barry Oliver, which is dated October 31. Although Moran was with two members of the organizing committee, Pat Finn and Jean Olivieri, his testimony regarding this solicitation was not corroborated.

In addition to the above testimony, the General Counsel placed in evidence W-4 and I-9 forms obtained from the Respondent's personnel files for the purpose of authenticating the signatures on the Union's petition by a handwriting compari-

son. The original 11-page petition that was filed with the Union's petition on November 3 contains 48 signatures. The signatures of two individuals, Henry Archambault and Jaroslaw Ogniewski, appear twice. ¹¹ Although I am not a handwriting expert, a comparison of the signatures convinces me that most are genuine. A more detailed discussion of the authentication issue will be saved for later in this decision.

2. The Respondent's knowledge and response to the Union's campaign

Blancato testified that he learned from Schaffer's supervisor, in late September, that Schaffer was trying to organize a union. Blancato immediately contacted his attorney and, within days, held the first of a series of meetings with the employees to convey the Respondent's position on the Union. This first meeting may have been held even before the employees signed the union petition at the Log House Restaurant. The Respondent's attorneys prepared scripts for all of the meetings. These scripts are in evidence. According to Blancato, Spencer read the first speech verbatim. 12 Blancato did not speak at this first meeting.

According to the script of Spencer's first speech, he opened the meeting by telling employees that he was aware of the union talk and that he wanted to "set the record straight." After taking responsibility for any problems that might exist, Spencer stated the Respondent's position on the Union in unequivocal terms:

- We do not want a union here. It is our sincere belief that bringing a union to this operation will not help you, your families, me or this company.
- We intend to oppose any attempt by any union to get into this company with every proper and legal means available.
- No one who pushes any union in this company is going to receive any advantage or better treatment of any sort over those who choose not to join a union or vice versa.

Spencer then spoke about union cards and advised the employees to read the card carefully before signing it. He reminded the employees of his open-door policy and urged them to come to him to talk about any issues they had. Spencer then talked about "changes" that the Company had gone through in the preceding 2-1/2 years, in particular the conversion to a cell manufacturing process. Spencer told the employees that these changes were necessary for the Respondent to become "more flexible, responsive and competitive." He attributed a growth in business with unionized customers in the automotive industry

 $^{^{9}}$ Dixon identified the signatures of Gordon Marshall, Kevin Hackett, and Maria Budney.

¹⁰ The signatures of Gregorio Rodriguez, Maritza Castano, Andres de la Cruz, Jose Gonzalez, Wilson Perez, Jaroslaw Agniewski, Maria Nova, Kurt Parsons, Juan Aponte, Rafael de la Cruz, Ramona de la Cruz, Miguel de la Cruz, Rosa de la Cruz, and Juanita de Polanco were identified by Pimentel.

¹¹ Jaroslaw Ogniewski's first signature is dated October 5 and appears on the same page as the signature of his mother. The handwriting of both names appears similar and also resembles the handwriting for both Ogniewskis signatures on the sign-in sheet for the meeting. Because Pimentel testified that Jaroslaw Ogniewski was not at the October 5 meeting and that his mother signed for him, I shall not count the October 5 signature. As noted above, Pimentel testified that he obtained Jaroslaw Ogniewski's signature that appears on the ninth page of the petition and is dated October 13. Archambault's two signatures, which appear on different pages, are identical. Both signatures are dated October 5. His two signatures will be counted as one.

¹² Spencer did not testify at the hearing.

to these changes, warning that unionization could cause the Company to lose its "flexibility, responsiveness and competitiveness." He concluded the meeting with the following:

DO NOT sign a card or petition thinking that it is an empty gesture. **DO NOT** sign a card or petition because a friend asks you to. **DO NOT** sign a card or petition unless you have thought about all the events that are likely to occur from it.

I can not tell you what to do

I can ask you to think—please think about the Route 8 corridor—ask yourself what happened to Scovill, Chase Brass, Anaconda, Seymour Specialty Wire, Century Brass, Plume and Attwood and Torin. All great companies that are gone—every one of them a union shop.

According to Blancato, Spencer gave another prepared speech to the employees a few days after the first. Blancato testified that Spencer read the text of this speech verbatim as well. In the text, Spencer opens the meeting by referring to the previous meeting and acknowledging employees' complaints regarding the Respondent's policy on raises. Spencer then articulated for the employees the policy as follows:

Employees are reviewed once a year. Their review is conducted by their immediate supervisor. As a result of that review employees are given a wage increase.

Now under our policy it doesn't mean that everyone gets a raise. I personally believe that everyone should be judged on their own merits. Frankly some people deserve generous wage increases due to their hard work and commitment to the job. On the other hand, and I'm sure each one of you would agree with me, some folks don't deserve much of a raise, if any, because they don't bring the same commitment to the job as others do.

As I said the policy is pretty straightforward. However, I have learned that the problems do not lie with the policy so much as its implementation. It seems that not everyone has had a review in a timely matter. From my perspective there is no excuse for an employee not to receive a review. I spent a little time looking into it and I am trying to determine how this happened. I don't have all the answers yet, but I do know that some folks have not been reviewed on a yearly basis. This is wrong and I apologize for any mistakes that may have occurred.

Spencer then asked rhetorically why he didn't solve the problem by giving everyone a raise, and responded by saying he could not do that because it was against the law because of the union situation. Spencer told the employees that, although his hands were tied to that extent (giving employees raises), he would insist that the Respondent's policy on wage increases be followed and he would insist that employees be reviewed on a timely basis. Spencer ended this speech by referring to disagreements among the employees over the union issue and expressing his opinion that the union "causes distruction [sic] and friction among folks that used to be friends." Employee witnesses who testified for the General Counsel regarding Spencer's speeches tended to corroborate the text version in evidence. ¹³

After this meeting, Blancato took steps to implement Spencer's pledge that the Respondent would follow its policy on raises. In a memo to supervisors, dated October 20. Blancato listed the employees who were "due or overdue for an annual performance review." He referred to the "commitment" that the Respondent had made to its employees to enforce the annual review policy and directed the supervisors to complete reviews for the listed employees no later than October 31. Blancato advised the supervisors further that the reviews "must be an honest representation of the employees contribution to the business since it is the basis for determining wage increases." There is evidence in the record that the Respondent's supervisors carried out these instructions. Carol Winegar testified that her supervisor, Kisiel, told her in November that everybody was going to be getting a review and a raise by the end of the year. Winegar had not yet received a raise despite having worked for the Respondent for more than a year. Claude Thibodeau, a/k/a (Frenchie), testified that his supervisor, Ewing, gave him a review in October. 14 At the time, Ewing told Thibodeau that he would probably be getting a raise. Thibodeau had not received a raise in about 2 years. Odorczuk testified that, upon receiving the October 20 memo, he began completing reviews for the five employees in his department. The Respondent's records show that Odorczuk completed these reviews on November 16.

Odorczuk testified that, 6 months before the union campaign, he had spoken to Blancato and Spencer on behalf of one of his employees, Wladyslawa Ogniewska, who had not had a raise in 3 years. According to Odorczuk, this resulted in her being paid less than new employees who were being hired at the time. According to Odorczuk, Blancato, and Spencer would not give Ogniewska a raise, telling him that if she didn't like it, she could leave.

3. Restrictions on employee solicitation and distribution

There is no dispute that, prior to the union campaign, the Respondent either did not have, or did not enforce, any restrictions on employee solicitation and distribution. According to the uncontradicted testimony of the General Counsel's witnesses, it was not uncommon for employees to sell items like Avon products and school fundraisers at work, including during periods when they were at their machines doing work. Blancato himself acknowledged that the Respondent had no rules regarding solicitation and distribution and that it had allowed this activity to go on before the union campaign started.

Tyree testified that, sometime between the October 5 union meeting and November 2, Blancato approached her at her machine and asked her to "do him a favor and *not* have people sign union cards on company time." When Tyree denied that

¹³ The General Counsel does not allege that anything Spencer said in these two meetings violated the Act.

¹⁴ Thibodeau's review, which is in evidence, is dated October 31. Thibodeau signed it on November 2.

¹⁵ The transcript contains an error at p. 383, LL. 4–5 where the word "not" is omitted from the transcript of Tyree's testimony about this conversation. It is clear from the context of the testimony as well as

she was doing this, Blancato told her to tell whoever was doing it not to sign cards on company time. Tyree testified further that Blancato acknowledged to her that nothing had ever been said about people selling Avon and other things, but that "with the Union cards, it was something different." On cross-examination, Tyree was certain that Blancato did not say that he had to allow her to solicit union cards because he had let her sell Avon.

Schaffer testified to a similar conversation with Blancato in early October. According to Schaffer, Blancato approached him while he was working on the lift truck. Blancato asked Schaffer not to promote the Union on company time. Schaffer and Blancato then proceeded to discuss the issues in the plant that led employees to seek union representation. Schaffer cited Respondent's "sloppy" approach to raises and the "belligerent" attitude of some of the managers. Schaffer testified that Blancato acknowledged there was a problem with employee reviews and said that the Respondent was working on them. Odorczuk testified that Blancato told him and Ewing, the other first shift supervisor with whom Odorczuk shared an office, that he didn't want employees talking in the shop anymore and that, if they saw groups of employees talking, to break them up.

Blancato acknowledged speaking to Tyree and Schaffer about union solicitation but disputed their versions of the conversations. According to Blancato, Supervisor Ewing complained to him about Schaffer, Tyree, and Henry Archambault 'congregating" and spending a lot of time away from their workstations. Blancato testified that Ewing told him he believed they were talking about the Union. Ewing corroborated this testimony but recalled telling Blancato about a fourth, unnamed employee who was also involved in these union discussions on the work floor. Blancato testified further that he approached Tyree at her machine in response to Ewing's complaint and told her that because the Respondent had allowed her to solicit Avon in the past, she had a right to solicit for the Union, but, as with her Avon solicitation, she should not allow her union solicitation to interfere with production. Blancato testified that he had a similar conversation with Schaffer. Blancato testified that Schaffer was very open about his support for the Union and spoke to Blancato about it on several occasions. He acknowledged that Tyree, in contrast, had not been an open union supporter prior to his conversation with her and that she became upset when he spoke to her about union solicitation.

Pimentel testified that, sometime after the October 5 meeting, but before November 3, Dave Abraham, the Respondent's plant manager, spoke to him about conversations he was having with employees about the Union. According to Pimentel, Abraham told him that the Respondent paid him to work, not to talk to the people and that, while he was at work, he was to sit down and work, not talk. Odorczuk also testified that Abraham instructed him not to let employees talk about the Union in the shop. Abraham denied having any conversation with Pimentel about the Union and denied telling Odorczuk or any employee directly that employees could not talk about the Union.

other portions of the transcript that Tyree used the word "not" when she testified. I shall correct the transcript accordingly.

Carol Ann Winegar testified that, within a week of the October 5 meeting, her supervisor on third shift, Kisiel, approached a group of employees while they were outside on a smoking break and told them that he didn't want anyone on his shift to discuss the Union on the premises. Kisiel denied this occurred. He acknowledged talking to employees during smoking breaks about the Union by expressing his opinion when asked for it, but denied interfering with any employees conversations on the subject.

4. Blancato's conversations with Pimentel

Pimentel testified that he had several conversations with Blancato after the October 5 union meeting. He was vague as to the dates and times of these conversations. Pimentel testified that the first meeting was in Blancato's office shortly after he signed the petition. According to Pimentel, Blancato called him to the office and told him that he knew Pimentel was talking with people in the Company about the Union. Blancato told Pimentel that the Respondent didn't want the Union and that if the Union came in, Pimentel would have to pay \$50-60 from his pocket, presumably a reference to union dues. Pimentel testified further that Blancato told him "now was the time" that the Company could give employees anything they wanted. Blancato then referred to a job in the office in which Pimentel had previously expressed interest, telling Pimentel he had an interview for it the following Monday. According to Pimentel, he had learned from another employee, before this meeting, that the Respondent was advertising for an accounting position in the office. Because Pimentel had been an accountant in his native Dominican Republic, he had already approached Blancato and expressed interest in the job. Blancato had told him at that time to talk to Cindy Murphy in human resources. Pimentel testified that when he spoke to Murphy, she told him she would speak to Blancato. Pimentel had not heard anything further before being called to Blancato's office after the union meeting.

Pimentel testified that he met with Blancato in his office on another occasion regarding a problem another employee, Maria Nova, was having with her leadperson, Mary Simmons. According to Pimentel, after discussing Nova's problem, Blancato told Pimentel that he was still speaking with the people about the Union and that Blancato had told Pimentel he wanted him to stop doing this. Blancato told Pimentel to remember that he had a family to support and reminded him that he was on light duty. Pimentel testified that Blancato also said, at both meetings, that if the Union came in, the Respondent would close its doors. On cross-examination, Pimentel acknowledged that he did not include this last statement in the description of this conversation in his pretrial affidavit.

Pimentel testified that, after the October 5 meeting, he was followed by Ewing or Simmons anytime he got up from his work area, even when he went to the bathroom. According to Pimentel, if he stopped to talk to someone, Ewing or Simmons would tell him to get back to work. Pimentel claimed that this occurred even on occasions when he had to drive the forklift to get material in other parts of the plant. The evidence in the record shows, however, that Pimentel did not drive the forklift in the fall of 2000.

Blancato recalled having two conversations with Pimentel in the fall of 2000, both of which were very different from Pimentel's testimony. According to Blancato, Pimentel first approached him on the shop floor in late September about an ad that the Respondent had run in the local newspaper for an accounting clerk. Pimentel told Blancato that he had accounting experience from his native country and asked to be considered. Blancato told Pimentel that the Respondent had received resumes in response to the ad and was in the process of interviewing. He told Pimentel that he would arrange with Murphy for Pimentel to be interviewed by Bill Nemec, the Respondent's controller at the time who was hiring for that position. Blancato testified that he spoke to Murphy after his conversation with Pimentel and that she told him that Pimentel had already talked to her about the job and that she had set up an interview for Pimentel. According to Blancato, Pimentel did not show up for the interview. Blancato denied there was any mention of the Union in this conversation. Murphy corroborated Blancato's testimony about this issue.¹⁶

Blancato testified that his second conversation with Pimentel occurred in early October when Pimentel came into Blancato's office to complain about his supervisor, Ewing, and lead, Simmons, being "on his back." Blancato told Pimentel that he had received reports from Ewing and Simmons about Pimentel being out of his work area and not doing his job. He told Pimentel to go back to work. When Pimentel repeated his complaint that Ewing and Simmons were on his back, Blancato again told him to go back to his area and do his job. Blancato denied making any threats or promises to Pimentel and specifically denied making the alleged 8(a)(1) statements in his conversations with Pimentel. Ewing testified that Simmons complained to him in October/November that Pimentel was constantly out of his work area and that she could not get her production out because of this. Ewing testified that he spoke to Pimentel about this and told him to stay at his workstation. Simmons did not testify.

5. Blancato's conversations with other employees

As noted above, Blancato's admonition to Tyree regarding card solicitation upset her. Tyree testified that when Blancato walked by her machine again, she called him over and told him that she was upset that he was assuming that she did something, i.e., solicited union cards, that she didn't do. She then reminded him of a recent incident in which another manager had yelled at her. She told Blancato that when she complained about the way she had been treated, nothing was done. Blancato then invited Tyree into his office to talk further. According to Tyree, the subject of the Union came up again during her conversation with Blancato in his office. Tyree testified that Blancato told her that he didn't feel that employees needed a union. He told her that he was in charge now and that things would be different. The conversation also included a discussion of her boyfriend who had also worked for the Respondent until he was fired in the spring. Tyree denied rumors that her boyfriend was the one behind the union drive. Tyree then asked if the rumors she heard, that the Respondent wanted to get rid of her, were true. Blancato told Tyree that the rumors were not true and asked her why he would have offered her a cell leader position if he wanted to get rid of her. Tyree testified that she herself did not understand why the Respondent had offered her a cell leader position because Spencer had already accused her of saying bad things about the Company. Tyree became distraught during her testimony about these interactions with Blancato, crying while on the witness stand.

Blancato acknowledged having this meeting in his office with Tyree after she became upset during their conversation on the shop floor. He corroborated Tyree's testimony that they discussed her boyfriend's termination and the "rumor" that he wanted to fire her. Blancato testified that he told Tyree to come see him if she ever heard rumors in the factory that upset her. Blancato denied that there was any mention of the Union during this conversation. According to Blancato, he and Tyree both said, at the beginning of the meeting, "this is not a conversation about the Union."

As noted above, Blancato told Schaffer in October that he was aware of the employees' concerns about raises not being given and that he was working on the problem. Schaffer testified that he had another conversation with Blancato in mid-December in which he asked about raises. According to Schaffer, Blancato told him at that time that raises and anything else "in a positive standing" could not happen while the "union negotiations" were going on. Blancato did not specifically contradict this testimony. He did generally deny threatening employees that Respondent would withhold wage increases or other benefits because of the Union.

Odorczuk testified that he attended several meetings in Blancato's office with Jaroslaw Ogniewski, a Polish-speaking employee in his department. Odorczuk served as Blancato's translator. According to Odorczuk, Blancato tried to convince Ogniewski that he could get a better job and make more money without the Union. Odorczuk testified that Blancato told Ogniewski that "someday you could make more money than Joe [Odorczuk]." Blancato also told Ogniewski that he didn't want Jaroslaw or his mother (Wladyslawa Ogniewska), or anyone else to join the Union. Blancato admitted meeting with Jaroslaw Ogniewski and Odorczuk, but denied making any promises or otherwise violating the Act. According to Blancato, Odorczuk brought Ogniewski to his office and said that Ogniewski wanted to tell Blancato personally that he was not in favor of the Union. Ogniewski then said the same thing. Blancato admitted that he then reiterated the position expressed at company meetings with employees that the Respondent did not think the employees needed a union. It is undisputed that Ogniewski eventually was promoted to a job on the hinge line that paid more money than his job working for Odorczuk.

6. Roberta Tyree's overtime

Tyree testified that, prior to the union meeting at the Log House Restaurant, she routinely worked 1-1/2 to 2 hours of overtime each day before the start of her regular shift at 7 a.m. She had been working this overtime since April or May on the hinge line to fill in for an injured employee. Her boyfriend,

¹⁶ Pimentel never had an interview for this job. Pimentel testified that, despite Blancato's promise of an interview, he was never called for an interview. Blancato and Murphy testified, in contrast, that Pimentel did not show up for his scheduled interview.

John Collins, had been the foreman on the hinge line before his termination. Tyree testified that she had also worked Saturday overtime on the hinge line until June or July when she told her supervisor, Ewing, that if she had to work on the hinge line, she didn't want to come in on Saturdays anymore. Tyree testified further that, after she attended the union meeting, Ewing told her to start reporting for work at 7 a.m., her normal start time. The only explanation she received at the time was that Plant Manager Abraham told Ewing that, if Tyree didn't want to work Saturday overtime, she could not work overtime during the week. Tyree did not work any overtime again until after the first of the year.

A computer printout showing the times Tyree punched in and out on the timeclock supports her testimony. The printout covers the period from July 31 through January 20, 2001, and shows that she punched in by 6 a.m. the week of July 31 and then began punching in before 5:30 every morning that she worked through October 6. From October 10 through the end of the period covered by the printout, Tyree never punched in before 7 a.m. This record also shows that she worked only two Saturdays between July 31 and October 10, i.e., September 9 and October 7, and did not work any Saturday again until the first of the year. The printout shows that she worked every Saturday in January 2001. Copies of Tyree's pay stubs in evidence show that she was paid overtime in every week from the pay period ending June 9 through the pay period ending October 8, but received no overtime pay through the remainder of the year. 18 A summary of the Respondent's payroll records prepared by the General Counsel reveals that all employees who were assigned to the hinge line were paid some overtime during the period October 10 through December 2, and some received a substantial amount of overtime during this period.

Odorczuk testified for the General Counsel that he was in the office he shared with Ewing when Abraham came in and said to Ewing, "Roberta Tyree and Hank Archambault are not working one more hour of overtime." According to Odorczuk, this occurred after the Respondent became aware of the Union. As previously noted, Archambault was another member of the Union's in-plant organizing committee. 19

The Respondent did not deny that Tyree was not assigned overtime after October 8. Ewing testified, however, that Tyree worked hinge line overtime until she chose not to work it. He testified that Tyree told him one time in October that, if she was coming in that Saturday to work the hinge line, she was not interested. Although Ewing acknowledged that she was only talking to him about that particular Saturday, he stopped assigning her any overtime after that. Abraham testified that Ewing told him in early October that Tyree did not want to work Saturday overtime on the hinge line anymore. According to Abra-

ham, he asked Tyree himself if she wanted to work the overtime anymore and she said no. Abraham denied instructing Ewing to take overtime away from Tyree because of the Union.

7. November 3 demand for recognition

On Friday, November 3, about noontime, a group of employees, including Schaffer and Pimentel, went to Blancato's office with a letter prepared by the Union and signed by the employees on the organizing committee. The letter advised the Respondent that a majority of employees had designated the Union as their bargaining representative and sought recognition. Schaffer testified that he tried to hand the letter to Blancato, saving that the letter was from the Union. Before he could say anything else, Blancato told him to get out of his office and to give the letter to the NLRB. The employees then went upstairs to Spencer's office to try to give him the letter but Blancato got there before they did and turned them away before Schaffer could say anything. The employees then went back to the shop floor and tried to give the letter to Plant Manager Abraham and Supervisor Ewing and again were rebuffed. Pimentel corroborated Schaffer regarding the employees' efforts to deliver the letter. Pimentel also testified specifically that he was the one who spoke when the employees tried to present the petition to Ewing. According to Pimentel, he told Ewing, in heavily accented English, that a "mayoria" of the employees had signed for the Union. Ewing apparently understood what Pimentel was saying because he told the employees to get out of his office and to go see Blancato.

Blancato admitted sending the employees away when they tried to hand him a letter, but denied that Schaffer or the employees said anything. According to Blancato, he assumed when he saw Schaffer with a piece of paper in his hands leading a group of employees that it was something from the Union. He told Schaffer that he was not interested in what he had and that they probably needed to bring the paper to the NLRB. Blancato admits that he immediately went up to Spencer's office to tell him what had happened. When Blancato saw the same group of employees coming toward Spencer's office, he turned toward them and said, "I have already told you I am not interested in whatever you have. You have to bring it to the NLRB." Ewing also admitted being confronted by a group of employees with a piece of paper. He denied that Pimentel said anything about a majority of employees supporting the Union, testifying that Pimentel didn't "get that far" before Ewing cut him off and told them to bring whatever they had to Blancato.

The Union filed its petition and showing of interest with the Board's Regional Office the same day.

8. Movement of the EN-114 machine

There is no dispute that the Respondent, sometime in the fall, subcontracted assembly of a glove box hinge for the Ford Crown Victoria to a company called Summit Manufacturing. As part of the subcontracting, the Respondent shipped the machine used to assemble this hinge, the EN-114, to Summit. The first purchase order for hinges from Summit, which Blancato testified is the only writing documenting the existence of a contract, is dated November 7. Ralph Larson, the president of Summit who testified for the Respondent, recalled that the machine was moved to his shop the weekend before Veteran's

¹⁷ There is no dispute that overtime is voluntary.

¹⁸ Paystubs for several weeks are missing. The computer printouts from the timeclock show that she would have earned overtime during some of the weeks that are missing in September. For the weeks ending June 30 and July 7 and 28, there is no record in evidence that shows whether she was paid overtime those weeks.

¹⁹ The Respondent's records show that Archambault also suffered a loss of overtime coincidental to the onset of the Union. This lends credibility to Odorczuk's testimony.

Day, which would be November 11-12. Schaffer recalled that the EN-114 was moved around the time that he and the other employees went to Blancato's office with the letter from the Union. Pimentel and employee Michael Dixon testified that the machine sat on a forklift for several days before it was moved. Abraham could not recall "how many days" the machine sat on

Pimentel testified that, one day while the machine was sitting in the aisle, Ewing made a comment to him and the two employees who had been working on the EN-114, Jose Gonzalez and Andre de la Cruz. Pimentel first testified, in his limited and heavily accented English, that Ewing said, "[Y]ou see that machine going, the EN-114? Later, the 8096 going later. You're going too. That one is because we don't want the Union over here." When Pimentel testified about this conversation in Spanish, he was able to more eloquently express Ewing's comment expressing the same idea. Neither Gonzalez nor de la Cruz testified at the hearing.

Employee Michael Dixon testified that he also saw the EN-114 machine in the aisle, ready to be shipped. Dixon asked Abraham what was going on. Dixon recalled that Abraham responded, "It's going out. These things happen" or "that's the kind of thing that can happen" and then referred to the Union. At the hearing, Dixon appeared uncertain when asked what, if anything, Abraham said about the Union. In his pretrial affidavit, Dixon also stated that Abraham said something about the Union in connection with the movement of the EN-114, but he could not remember what he said.

Odorczuk testified that he also heard Abraham comment about the removal of the EN-114 machine in the presence of employees. According to Odorczuk, Abraham said that the EN-114 wasn't the only machine going out, that all the assembly machines would be going. Odorczuk testified that Abraham pointed to Andre de la Cruz, one of the employees who worked on the EN-114, and yelled out, "[T]his job is going out and you're next."

Ewing and Abraham specifically denied making any statements to Pimentel or any other employee linking the removal of the EN-114 to the union campaign. Abraham admitted saying, to no one in particular, when he saw the machine on a pallet in the aisle outside his office, "well, there goes the EN-114 machine. These things happen."

The Respondent offered the testimony of Blancato and Larson regarding the negotiations that led to the subcontracting of this work. These negotiations apparently began in August with a general discussion of the possibility of subcontracting some work to Summit. It was not until October that an agreement was reached on the terms of the subcontract for the EN-114 assembly. Blancato testified that there were two reasons for his decision to subcontract this work, i.e., cost and quality. In contrast, Larson recalled being told that the Respondent wanted to subcontract because "they were having difficulty getting the product out to customers due to a shortage of manpower and difficulty in hiring employees." The evidence in the record does reveal that a significant cost savings has been achieved over time as a result of this subcontract. The two employees who had worked on the EN-114 were not laid off as a result of the subcontracting of this work. Instead, they were reassigned to hand assembly, the same work that Pimentel was doing.

9. The denial of light duty to Pimentel

Pimentel was employed by the Respondent for approximately 3-4 years. His regular job was as a machine operator on the shear machine. On March 3, he injured his back and was out of work until March 8 under a note from his doctor. The doctor stated that he could return to work, "as tolerated," with a lifting restriction of 25 pounds until his next visit to the doctor. It is undisputed that the Respondent accommodated Pimentel by placing him on light duty, doing hand assembly, when he returned to work. After seeing his doctor again on March 29, Pimentel was told he could return to work without restrictions. Pimentel reinjured his back shortly thereafter and was again given a weight restriction on April 20. This time his doctor limited him to 15 pounds lifting with "no straining or pushing." The Respondent again accommodated him with the same light duty job he previously was assigned. On May 5, Pimentel's doctor increased his lifting ability to 25 pounds and advised "caution with straining and pushing." On August 24, Pimentel isited another doctor who gave him a note stating that Pimentel "should avoid repetitious bending at the waist and the lifting of more than 15 lbs." He continued to work the same light-duty job with these restrictions until October 9, when he apparently injured his knee. Pimentel remained out of work until November 1. During this time, he changed doctors. His new doctor signed a note recommending "light duty," without specifying any weight limit, and "avoid bending and straining pending orthopedic surgery evaluation 11/14/00." After his evaluation on November 14, the orthopedic surgeon gave Pimentel a note certifying the following restrictions: "avoid prolonged postures, maximal 10-15 lbs. lifting, minimal bending. Restrictions are due to L5-S1 herniated disc."²¹

As noted above, Pimentel attended the union meeting at the Log House Restaurant on October 5 where he signed the authorization petition and volunteered for the organizing committee. It was on the following Monday, October 9, that he reinjured himself. Pimentel was out of work for the rest of October. The 14 signatures on the Union's petition that Pimentel identified as those he solicited are all dated during the period he was absent from work. Pimentel also testified, as previously noted, to two conversations in Blancato's office within a week of the October 5 meeting. During one of these conversations, Pimentel claims that Blancato impliedly threatened to take away his light-duty work.²² Because he only worked 2 days after the union meeting, these conversations would have to have occurred on October 6 or 9. Shortly after returning to work on November 1, Pimentel signed the November 3 letter

²⁰ Although there is evidence in the record that the employment of one of these two employees, Juan Gonzalez, ended within 2 months of the subcontracting, there is no evidence that his termination was a result of it. On the contrary, Ewing testified without contradiction that Gonzalez left voluntarily to return to Puerto Rico. De la Cruz is still employed by the Respondent.

²¹ Pimentel was receiving workers compensation benefits for his injury during his periods of absence.

22 Blancato denied making this threat, as previously noted.

from the Union and went with the group of employees who tried to present it to Blancato and other management representatives. Blancato identified Pimentel as being in the group and Ewing recalled that Pimentel was leading the group when they tried to present the letter to him.

On November 14, the same day that Pimentel visited the orthopedic surgeon, the Respondent and the Union signed a stipulated election agreement at the Board's Regional Office.

Pimentel testified that he gave the November 14 doctor's note to Ewing, his supervisor, when he reported for work on November 15.²³ According to Pimentel, he started his light-duty assembly work and worked until 10 or 11 a.m. when he was called into Abraham's office with Ewing. Abraham told Pimentel that the Respondent did not have a 40-hour-light-duty job for him. Abraham then said he didn't understand what the doctor was saying in his note regarding "prolonged postures." Pimentel told Abraham that meant he needed to stand or sit, as he had been doing. Abraham again said that the Respondent did not have a 40-hour-light-duty job for Pimentel. He told Pimentel to go home, collect worker's compensation and come back when he could work full duty. Abraham assured Pimentel that his job would be there when he returned. Pimentel left work that day, as he was instructed. He has never returned to work.

Pimentel testified that his physical condition did not change between November 1 and 14, that he was still capable of doing the light-duty hand assembly he had been doing since March. According to Pimentel, he was already performing this work with a sit/stand option. He would get up and stretch as needed. Pimentel also testified that he had modified his work area so he could do his job from either a sitting or standing position. Pimentel's testimony was corroborated to some extent by other employees who recalled seeing Pimentel performing his light-duty work in a sitting and standing position.

Abraham disputed Pimentel's testimony regarding his lightduty assignment. According to Abraham, the Respondent tried Pimentel out on numerous jobs after his March injury, including a job operating the forklift. Each time, Pimentel complained. Finally, Abraham asked Pimentel to walk around the plant and find a job he could do. That was when Pimentel identified the hand assembly job he was working in the fall. Abraham conceded that Pimentel had been on that job for some time prior to the union organizing campaign. Abraham testified that Pimentel did not have to lift anything on this job, but that he would have to be sitting to assemble the hinges because the workbench was so low. Abraham also disputed Pimentel's testimony that he had configured his work area to enable him to work in a sitting or standing position. Ewing agreed with Abraham's assessment of the requirements of Pimentel's light-duty job only to a degree. Although Ewing testified that it would be "uncomfortable" to assemble these parts standing up, he acknowledged that Pimentel had been permitted to stand and stretch as needed.

Abraham and Ewing also contradicted Pimentel regarding the meeting on November 15. They both acknowledged that Abraham told Pimentel that the Respondent could not accommodate the new postural restriction. However, Abraham and Ewing denied that Pimentel was told to come back only when he was released to full duty. According to these witnesses, Abraham told Pimentel to come back when he got a note from his doctor that showed he could do either his normal job, or the light duty job he had been doing.

On cross-examination, Abraham testified that the Respondent typically "go[es] out of [its] way to find light duty for everybody." He confirmed that the Respondent had been able to accommodate even those employees who were limited to using one hand. In one instance, a helper was assigned to work with the one-handed employee. Abraham also testified that the Respondent has "lots of easy work," and that there are some machines at the Respondent's facility where the employee just pushes a button and sits there while the machine is running. Although Abraham testified that he met with Blancato and Cindy Murphy after receiving Pimentel's November 14 doctor's note to determine whether there were any jobs that could be done with the "new" postural limitation, neither Blancato nor Murphy were asked to corroborate Abraham regarding such a discussion

Abraham also conceded that he did not seek clarification from Pimentel's doctor regarding the postural limitation. According to Abraham, that was not something he would ordinarily do. He testified that human resources would be responsible for something like that. Murphy was not asked any questions regarding the Respondent's response to Pimentel's November 14 doctor's note. Nor did the Respondent offer any evidence to show that any effort was made to clarify the extent of Pimentel's "new" postural limitation.

10. Blancato's speeches and the plant closing poster

There is no dispute that, between late November and early December, Blancato held a series of meetings with the employees to discuss the Union and the upcoming election. Odorczuk testified that there were about 10 such meetings. Tyree and employee Michael Dixon testified that there were meetings in the cafeteria about once a week between October 5 and the scheduled election date. Lee Sochon, another employee who testified as a witness for the General Counsel, recalled attending two or three meetings but said there were other meetings that he did not attend. Winegar attended the first meeting at which Blancato spoke, on November 22. She recalled this date clearly because it was her last day of employment at the Respondent.

With the exception of Winegar, the General Counsel's witnesses had difficulty specifying what was said at each meeting. Because Winegar attended only the meeting on November 22, it was easier for her to match Blancato's statements to a specific meeting. ²⁴ Winegar recalled Blancato saying that the Respondent would close because the Union would cost too much. She recalled that he mentioned by name other factories that had

²³ In his pretrial affidavit, Pimentel said he gave the note to Ewing "late morning." Ewing testified that Pimentel gave him the note first thing in the morning and that he told Pimentel that he would have to wait until Abraham and human resources started work at 8 a.m.

²⁴ Because these meetings were held while Pimentel was out of work, he did not testify about any of the meetings.

a union but were now closed. One of the factories he mentioned was a facility operated by her soon-to-be new employer. On cross-examination, Winegar recalled that Blancato also told the employees that, if they had a Union, they would be paying someone to represent them and that the Union could make promises, but negotiations would determine what the employees ultimately got. She also recalled a discussion about strikes.

Tyree testified that Blancato used overhead projections to illustrate one of his speeches, including an overhead listing union factories that had closed. She recalled Blancato talking about this but could not remember anything he said about the plants other than that they had been unionized and were now closed. Tyree testified that Blancato also talked about the Respondent's former plant in Beacon Falls and said that one reason the Respondent closed that plant and moved to Winsted was to get away from the Union. Tyree recalled that Blancato said the Respondent could lose business if it had a union because Ford, the Respondent's biggest customer, doesn't like working with union shops. On cross-examination, Tyree was forced to concede that she was not sure if Blancato said that the plants depicted on the overhead had closed because they were Union, or that they had closed and the Union couldn't do anything about it. Tyree also acknowledged that there was no mention of this statement in her pretrial affidavit. Tyree also recalled, on crossexamination, that Blancato talked about job security and said that the Union could not guarantee job security, that the only way to have job security is to work together to satisfy the customer

Lee Sochon testified that Blancato used an overhead projection with pictures of closed union factories and said. "[I]f things get bad, the company may have to close." According to Sochon, an employee asked Blancato if he was saying that the Respondent will close if the Union was selected. Sochon testified that Blancato replied by repeating, if things got real bad, the Respondent might close. Michael Dixon also testified that an employee questioned Blancato about his plant closing statement, but he recalled Blancato responding that "it might happen, could happen, I don't know." Schaffer testified that he was the employee who questioned Blancato when Blancato talked about what could happen if there was a union. According to Schaffer, when he asked Blancato for more information, Blancato said, "[T]his is what happened to those factories, this could happen here." Dixon and Schaffer, on cross-examination, recalled Blancato making statements about job security similar to those recalled by Tyree. Finally, Odorczuk testified that Blancato talked about the closed union factories and said, "[J]ust because of the Union, all these places closed and people lost their jobs." He also recalled the statement that Tyree recalled about the Respondent having closed the Beacon Falls plant and moved to Winsted to get away from the Union. Odorczuk testified that it was Spencer who made this statement.

All of the General Counsel's witnesses testified that, during the preelection campaign, they saw a poster in the plant depicting closed factories. The poster, which is in evidence, is approximately 30" x 40" in size. At the top of the poster appeared the following statement, in bold type:

These are just a *few* examples of plants where the UAW *used to* represent employees.

(Emphasis in original.) Underneath this heading are five photographs of shuttered, dilapidated buildings and overgrown parking lots. Under each photograph is the name of a factory, its location and the date it closed. Across each photograph is written, in large red block letters, the word, "CLOSED." Under these pictures is the statement: "Is this what the UAW calls job security?" At the bottom of the poster, it says "VOTE NO!" next to a depiction of the No box on the ballot marked with an X. This poster was posted at or near the cafeteria where the meetings were held. A smaller version of this poster was also posted by the timeclock.

The Respondent produced written scripts for seven meetings, including the two described above that were held shortly after the Respondent learned of the union campaign and at which Spencer did most of the talking. There were also two prepared speeches that were read by Blancato after the December 14 election was canceled. Blancato testified that the remaining three meetings were held on November 22 and 28 and December 5. According to Blancato, he did not read the scripts for these meetings verbatim. Instead, he spoke either from "trigger points" he prepared before the meeting based on the text or by glancing at the headings in the prepared text for clues regarding what he was supposed to say. 25 In response to questions from the General Counsel, Blancato conceded that he did not have a clear recollection at the hearing of the words he actually used at these meetings, but he did have a clear recollection of the topics he discussed and a general recollection of what he said about the topics. According to Blancato, at the time he gave these speeches, he had committed to memory the contents of the prepared scripts and knew what each "trigger point" in his notes was supposed to trigger.

Blancato denied that he or Spencer made any threats of plant closure during these meetings.²⁶ He also denied making any reference to the poster at the meetings. According to Blancato, the poster was put up at the end of the campaign to emphasize the points the Respondent had been making throughout the campaign about job security. Blancato testified that job security was an issue that the Union had raised in its campaign literature. Blancato did identify a chart of "UAW Plant Closings in Connecticut" that he believed Spencer used in making one of his speeches. The 13 UAW plants listed include the 5 that are pictured on the poster. Next to the name of each plant is the number of jobs lost as a result of the plant having closed. At least one of the General Counsel's witnesses recalled seeing such a chart during one of the meetings. Blancato conceded during cross-examination that he did not know any of the facts or circumstances surrounding the closure of these plants.

The text and trigger points for the November 22 meeting show that Blancato talked first about "the issues involved with the Union effort to make monthly dues payers out of each of you." Blancato then introduced Spencer to talk about the Re-

²⁵ Blancato's testimony is consistent with the recollection of other witnesses that, although Blancato may have been holding papers in his hand, he did not read the speeches to the employees.

²⁶ As previously noted, Spencer did not testify.

spondent's history with unions. One of the points made by Blancato, according to these documents, is that the NLRB's rules governing union organizing efforts were "unfair" to employers because they allowed unions to make any promises they want to win the vote while prohibiting employers from making promises. Blancato told the employees that the reason for such an unfair rule is that the NLRB knows that a union can not deliver on its promises while an employer can. Blancato's trigger points show that he emphasized this point by telling the employee "HDB [the Respondent] can make good . . . the Union can not." After Spencer spoke about the Respondent's history, Blancato wrapped up the meeting by telling the employees they were free to vote no in the December 14 election even if they had signed a union authorization card. His trigger points indicate that he also told the employees at the end of the meeting that the Respondent would meet with them twice a week to present "all the facts."

Because Spencer did not testify and there are no notes of his portion of the November 22 speech, I will rely on the written text to the extent it tends to corroborate the testimony of the General Counsel's witnesses. According to the text, this is what Spencer told the employees about the Respondent's history with unions:

It seems to me that as you are faced with the question of whether or not to have a Union here at Homer Bronson part of the answer to that should lie in our own history with unions. There is a famous saying, "those who cannot read history are bound to repeat it." You can learn a lot from history. So today I am going to spend a little time talking about history.

My dad first became involved with Homer Bronson in Beacon Falls after World War II. The company was then and is now primarily a hinge manufacturer. The company grew after World War II. In fact an operation was opened in Chicago. Both the Chicago and Beacon Falls operation were unionized. The employees were represented by the Steelworkers Union.

It seemes [sic] that in those days there was a strike every three years. Whenever the contract ended, the Steelworkers went on strike. The strikes lasted from 2–8 weeks. I know about those strikes because frankly I crossed the picket line with my brother to work during the strikes when we were teenagers. The last strike I remember was in 1979. I think that was the straw that broke the camels back. The company was fed up and tired of strikes and disruption and the effect it had on business. They bought the land in Winsted and Beacon Falls was closed down. It was closed down and reopened here in Winsted. Winsted of course has always been a non-union facility. In addition the unionized operation in Chicago closed down and that work was brought here to Winsted as well.

So clearly the history of Homer Bronson and unions has not been a good one. From the company's prospective [sic] the disrubtion [sic] caused by strikes and loss of flexibility in the union contract hurt business and frankly from the employees point of view the Steelworkers Union could not provide them job security. Just ask any employ-

ees who used to work for Homer Bronson in Beacon Falls or Chicago, when the plants closed down they lost their jobs.²⁷

The text shows that Spencer continued, after a pause, talking about the Respondent's history since he joined the Company in 1990 as vice president of marketing. He described how the Respondent was losing \$1.6 million a year at that time and was losing customers. Spencer then spoke about changes that had been implemented since the Respondent was purchased by Hank Martin, including the conversion to cell manufacturing. According to the text, Spencer told the employees the goal of these changes was to make the Respondent competitive in an increasingly difficult market to keep their jobs secure. Spencer then reiterated his comments from the earlier speeches, acknowledging that "mistakes" had been made without this time giving any specifics. After telling employees that the Respondent's ability to remain competitive and gain new customers and thereby create job security depended on continuing on the present course, he concluded his remarks as follows:

It seems to me you have to ask yourself this question: Will the Union help this company remain competitive and gain new customers in order to grow and prosper in Winsted, Connecticut? Ask yourself, please, will this Union help us to be responsive, flexible and competitive as required by our customers? Or will this Union do to this new Homer Bronson what it did to the old Homer Bronson?

Blancato testified that he did not have time to prepare "trigger points" for the speech he gave on November 28. He also denied reading the text of this speech verbatim. Instead, he flipped through the text prepared by his attorneys and used the headers as trigger points. The headers in the text are: "Introduction"; "What is the Union?"; "Cost of a Union"; "Fines"; "Promises"; and "Conclusion." The text under "Introduction" includes a reminder to the employees that Blancato explained to them at the last meeting that "this election has far reaching consequences on each and everyone of us here, our families and the company." The text then promises that the Respondent will give the employees "the facts" and "the truth" about the Union 'so that you will vote the way that is best for you and your families on December 14, and from my perspective, that is to vote no for the union." The text under the next two headers is a lengthy discourse on the Union as a business that makes money by charging employees dues, fines, etc. The text makes reference to the LM-2 report of the Union's Local 376 to estimate the amount of dues employees would have to pay if the Union were selected. The text then discusses dues-checkoff clauses, the possibility of dues increases and the salaries of union officials, including organizer Becotte, that are paid from these dues. Under the header "Fines," the text discusses internal union charges and trials by the Union's "kangaroo court" and the fines that result, citing as examples fines assessed for crossing a

²⁷ Blancato testified, surprisingly, that the text of this speech was prepared by the Respondent's attorneys without any input from him, Spencer, or anyone else in the Respondent's operation. One is left to wonder how counsel knew so much about the Respondent's history of dealing with unions.

picket line. The text of the speech regarding "Promises" repeats the message of earlier speeches that the Union can make promises but can not deliver on those promises. The text then describes the duty to bargain collectively, emphasizing that the Respondent, although required to bargain in good faith, is not required by law to agree to any union demand or to retain all current benefits. According to the text, Blancato told the employees "there is no guarantee that the benefits and wages that you now have will go up. To the contrary, they could go down or even remain the same. There is no guarantee—everything is negotiable." The text follows this discussion by telling employees that the only two things the Union can truthfully guarantee employees is that they will have to pay monthly dues and that the Union will become the employees one and only spokesman. The latter guarantee is then explained in terms of the employees giving up the right to speak for themselves in return for having a coworker who is the Union's steward, or a union business agent, represent them if they have a grievance or problem at work. The text also contains a discussion of superseniority clauses. According to Blancato, Spencer did not deliver any part of this speech.

Blancato did prepare "trigger points" for the last preelection speech he gave on December 5. In addition, copies of overhead projections he used to illustrate his speech are in evidence, along with the prepared text. The topic of this speech was strikes and, in particular, the history of the Union's Local 376 and strikes. Blancato's notes, the text and the overheads show that Blancato introduced this subject by reminding employees of his previous speech, in which he explained the process of collective bargaining and the lack of "guarantees" that this process would lead to improved wages, benefits, etc. He described the strike as the Union's only option if the Employer would not agree to the Union's demands and the Union would not accept the Employer's offer. Although Blancato told the employees, if he followed his notes, that "strikes are not inevitable," the slide projected and the text read: "Where there are unions. . . . there are strikes." Blancato then proceeded to give the employees the "facts" about strikes, including the employer's right to hire permanent replacements in the event of an economic strike and the cost to employees of a strike in lost wages and benefits. Blancato next reviewed the history of strikes by Local 376, which is referred to in the text as "strike happy." The history described was essentially one of lengthy strikes marked by violence that ended without a contract or wage increase and which sometimes resulted in loss of jobs through subcontracting or the Company going out of business. Blancato projected newspaper articles to illustrate his points. According to his notes, Blancato concluded his remarks by telling the employees:

If we did vote for a union, I am not saying there would be a strike

I am saying the history of Local 376 is a long one I am saying that you need to know the facts

The text of the December 5 speech includes a section on "Job Security."²⁸ Blancato also wrote at the end of his "trigger points": "Job security doesn't come from the UAW. It comes from us being competitive in our markets with quality, service and price." The prepared text under "Job Security" includes the following, which tends to corroborate the testimony of the General Counsel's witnesses:

I don't know what the Auto Workers Union is talking about in terms of job security—but let me tell you it sure can't provide job security. I have here a list of all the companies that have closed down in Connecticut who used to be represented by the Auto Workers Union in the last several years. This chart shows quite clearly that the UAW and Local 376 used to represent a number of business which no longer operate in Connecticut today. This chart shows that the Auto Workers Union could not guarantee job security for employees of the Torrington Company, Fafner Bearing, New Departure, Century Brass, Bristol Brass, North & Judd, TRW-the list goes on and on. In fact, this list shows that over the last 15 years, 13 companies have closed, putting 4,141 employees who used to be represented by the UAW out of work. Do you think those employees felt they had job security? What did the Auto Workers Union do for them? The answer is simple—they have done nothing.

Not only can the Auto Workers Union not guarantee job security but, in fact, the opposite may be true. Today, it is increasingly difficult to get and keep business. There is no doubt that in order to be successful in today's competitive business climate, you have to be out there day to day, beating the bushes trying to get and keep business. It gets tougher and tougher every day. Homer Bronson has been able to get business and beat the competition because we can deliver our product on time and in a quality manner. That's our job security.

The Auto Workers, nor any union, can guarantee you job security and, in fact, the Auto Workers' promise of job security is a dismal failure. As this list shows, today, thousands of employees are out of work in Connecticut despite the promises made to them by the Auto Workers for job security. I hope you will not be misled by those promises as unfortunately, many, many employees in the State of Connecticut have been in the past.

11. Third-shift wage increase

The Respondent started a third shift on September 18. Initially, employees working the third shift received the same differential as those on second shift. The Respondent's records show that the five employees working on third shift received an additional 5-percent differential on November 13. Winegar, who worked third shift, testified that her supervisor, Kisiel, told

²⁸ The name "Charlie" is handwritten on the text of the speech next to the job security heading. Blancato testified that Spencer gave part of the speech on December 5. Although he did not identify which part Spencer delivered, it may have been this section. If Spencer followed the practice described by Blancato regarding other speeches, he would have read this section verbatim.

the employees on third shift in early November that he had been trying to get them a 5-percent increase and that he was going to write a letter and submit it to the Company. According to Winegar, the employees had been talking among themselves, in Kisiel's presence, almost from the time she started on third shift, about the unfairness of getting the same differential as employees on second shift.²⁹ Winegar got the 5-percent raise in her last paycheck.³⁰

Kisiel denied having any conversation with Winegar about raises. With respect to the third-shift differential, Kisiel testified that about a month after third shift started, two employees approached him about getting an extra 5–10 percent over the second-shift differential. He agreed with the employees that this was a good idea and wrote a note to Blancato on the subject. The handwritten note, which is in evidence, is dated November 10 and reads as follows:

After successfully starting a third shift at Bronson Company with a group of employees that volunteered to transfer from second shift, a group I might add that are dedicated to the Bronson Company, I respectfully request that we increase their shift premium to fifteen percent.

Kisiel acknowledged being aware of the Union's organizing drive at the time he wrote this note. Blancato testified that the Respondent implemented the new third shift differential in response to Kisiel's request. He denied that the increase was given to influence employees' support for the Union.

12. Other conduct of Kisiel

Winegar testified that, a couple days after she signed the union petition at the October 5 meeting, Kisiel approached her while she was working at her machine and said, "I'm sure you heard that the Union is trying to get in and that some people think it will help, but it's just going to hurt." Kisiel specifically denied making such a statement to Winegar. Kisiel testified further that Winegar approached him outside during a break and asked him what he thought about "it." When Kisiel asked Winegar what she was talking about, she replied, "the Union trying to get in." According to Kisiel, he responded, "[N]ow that you've asked me, I can tell you my opinion." Kisiel then told Winegar that the Respondent was too small a Company and that it needed the flexibility of having employees do a variety of jobs. Kisiel testified that he expressed his opinion to other employees, but only when the employees initiated the conversation.

Winegar also testified that Kisiel told the third-shift employees, in the cafeteria in early November, that everyone would have a review and receive a raise by the end of December. About a week or two later, Kisiel approached Winegar at her machine and told her that the Respondent was postponing raises until after the union election. As noted above, Kisiel denied having any conversation with Winegar about raises.

13. The cancellation of the election

Pursuant to the parties' Stipulated Election Agreement, an election was to be conducted to determine whether the employees wished to be represented by the Union on December 14. On December 1, the Union filed the first of the unfair labor practice charges in this case alleging, inter alia, that the November 15 "layoff" of Pimentel violated the Act. On December 12, the Union requested that the election be held in abeyance. Blancato testified that he held a meeting with the employees as soon as he learned that the election had been canceled and read the following speech, prepared by counsel, verbatim:

Good afternoon. I got some bad news today. I was just informed by the National Labor Relations Board that the Union does not want to have the election on Thursday. They don't want the election because they are losing. Yet, that is not what they have said. They have filed an unfair labor practice charge with the National Labor Relations Board. They have done this because under the National Labor Relations Board law if the Union files a charge claiming an unfair labor practice the election is automatically blocked from going forward. The Union knew this—the Union knew that they were losing—so they filed a trumped up unfair labor practice charge.

As an example of how trumped up the charge is, the Union has claimed that—I am serious when I say this—they have claimed that the company giving Christmas Tree's [sic] to you and your family was an unfair labor practice designed to get you to change your vote. I have never heard anything so absurd. We did this same thing last year. All of us know it was ment [sic] to show our appreciation, as we have in the past, to you and your families for all the hard work and commitment you have given this company. For the Union to now turn around and claim that the Christmas Tree trip last weekend was a bribe for you, insults not only me but insults you as well.

I'm not sure how the process goes from here. I will keep you informed as I learn more. If you have any questions I will try to answer them if I can, if I can't I will try to get you an answer.

On the day of the canceled election, according to Blancato, he met with the employees again and read another speech, prepared by counsel, verbatim. This second speech reads as follows:

Good Morning

I told you yesterday that when I learn more about the process or procedure for what took place I would come and tell you. Well, this morning I have learned about the process. First of all I was informed by our lawyers today that this election was blocked even though the Union has not formally filed its charge yet. Apparently, they have simply told the Board orally that they are going to file a charge and no actual charge has been filed.

I was also told by our lawyers that the Union could have filed a request to go ahead with the election, or if they thought they were going to lose they could of [sic] withdrawn the petition.

²⁹ The Respondent's records show that Winegar started on third shift on October 2.

³⁰ As noted above, November 22 was Winegar's last day at the Respondent.

The Union however has chosen to file a charge—the specifics of which we don't have in writing yet. I also learned that the way the process now works is that once the Union files a charge the National Labor Relations Board will investigate it by talking to us and I suppose some of you, perhaps as witnesses for the Union. The National Labor Relations Board will then make a decision whether the charges have merit and if they think they do they will have a hearing so a judge can determine if they have merit. That hearing would probably occur 3 to 6 months from now. In addition, the party that doesn't win at that hearing can appeal it to the National Labor Relations Board in Washington. I guess that could take some period of time and then the party that loses from that can appeal to the United States Court of Appeals in New York City. God, this is beginning to sound like the presidential election, isn't it?

All those appeals and all that process could take up to three or more years. I think that is unfortunate. I think its unfortunate that we are going have [sic] to live with this potentially a very long period of time. During this time we will, of course, keep everything going by the rules of the National Labor Relations Board.

This whole process really brings home the point I tried to make earlier on. Once you get involved with the Union, you really do lose control of your lives. Do you remember when I told you that once you get involved with the Union you could be heading down a path you don't want to follow. That is because the Union makes all the decisions at the National Labor Relations Board.

The Union filed the charge blocking the election—the Union is now going to litigate this case. The Union, not you, will make a decision whether there is an election that goes forward—the Union, not you, will make a decision whether or not they file an unfair labor practice charges [sic]—the Union, not you, will make decisions about whether or not the charges are withdrawn. The Union is now making the decisions which fundamentally effect your lives in ways that frankly I didn't that were possible before this whole process began. [Sic.]

Certainly the way this situation stands now, no one is benefiting. Because of this, I have told our lawyers to go ahead and file a request with the government for the election to proceed. They told me that there wasn't much hope that it would be approved, but I thought we should at least try that.

Finally I must tell you that from my point of view, the lack of certainty resulting from the Union's actions could not come at a worse time. We need to focus our attention on the business not on these frivolous charges. Unfortunately, we will have to respond because we have done nothing wrong.

Blancato testified that he read these two speeches verbatim on the advice of counsel.

On December 13, employee Thibodeau began circulating a petition among his fellow employees. The petition states:

We want the Union to drop the petition and get rid of the charges. We don't want a Union at Bronson and want to resume to normal life [sic].

There are 52 signatures on the petition, many of which also appear on the Union's authorization petition.³¹ Thibodeau testified that he drafted the petition himself in order to find out if claims made by union supporters, that three-quarters of the employees wanted the Union, were true. Thibodeau acknowledged that he was also upset because Ewing told him he would not be getting the raise he was promised when he got his review because "everything's frozen." Thibodeau testified further that he went around with the petition during breaks and at noontime, obtaining most of the signatures on the first page. At the end of his shift, he gave the petition to Charlie Wolcott to circulate on second shift. According to Thibodeau, he told Wolcott to just hand it around and not to let the foreman see him doing it. Thibodeau testified that he arranged with the leadman on third shift, Rafael de la Cruz, to circulate the petition on that shift. Neither Wolcott nor de la Cruz testified. Thibodeau gave a copy of the petition to Dale Schaffer to give to the Union and sent a copy to the NLRB Regional Office with a letter dated January 10. In the letter, Thibodeau stated:

All we want is peace of mind and return to normal routine. Fairness is all we want and our rights. At this time we're in limbo and we really don't know why. Any action on your part to straightend [sic] this out would be appreciated.

Dixon and Schaffer contradicted Thibodeau, testifying that Thibodeau solicited them to sign the petition while they were working. Both refused to sign. Schaffer testified that he told Thibodeau that he would take the petition to the Union. Odorczuk testified that Ewing told him, while they were riding to work together, that Ewing and Thibodeau came up with the idea for the petition in response to a request from Blancato that they do something about the blocked election. Ewing denied such a conversation occurred, although he admitted commuting to work with Odorczuk on a regular basis. Ewing also acknowledged that he considered Odorczuk a friend and that he was candid when speaking to Odorczuk about the union campaign. Odorczuk also testified that Blancato asked him to talk to his people about signing the petition. Odorczuk did so and told Thibodeau when they were ready to sign. Odorczuk allowed Thibodeau to obtain the signatures of his employees during worktime.

Blancato testified that he was aware that Thibodeau was circulating a petition that had something to do with the Union, but denied seeing it or discussing it with Thibodeau or anyone else. Although Blancato admitted being aware that Thibodeau was circulating the petition during worktime and in work areas, he did nothing to stop it. According to Blancato, that was "not within [his] purview." When asked for a clarification, Blancato testified that it meant nothing to him whether employees were

³¹ One of these, Jean Oliveri, wrote next to her signature, "who ever say that lied about the tree." This appears to be a reference to Blancato's speech in which he described the Union's unfair labor practice charge as being based on the Respondent having given a Christmas tree to the employees.

signing the petition as long as it did not interfere with production.

14. The spring 2001 wage increase

Witnesses for the Respondent and the General Counsel appear to agree that the Respondent had a policy regarding wage increases before the advent of the Union.³² That policy called for an annual performance review that could result in a wage increase. At the same time, there is no dispute that, when employees began signing up with the Union in October, many employees had not received either a raise or a review in more than a year. The evidence is convincing that this was one of the chief concerns among the employees that led them to consider union representation. As previously discussed, Spencer and Blancato addressed this concern in response to the union campaign. The Respondent's text of Spencer's second speech to the employees shows that he acknowledged that the Respondent had not been following its policy, and that he promised the employees that he "would insist that our policy on wage increases be followed." Soon thereafter, Blancato sent his memo to the supervisors identifying those employees who were due or overdue for a review and directing them to complete these reviews by October 31. A number of these reviews were in fact done in the October/November period. I have previously discussed the testimony of several witnesses that they were told by their supervisors, in October or November, to expect a raise. These witnesses testified that the same supervisors later told them that the Respondent could not give any raises because of the union campaign. Thibodeau testified that his unhappiness over this was part of the reason he began circulating his petition after the election was blocked.

Summaries of the Respondent's payroll and personnel records, as well as copies of some of the records themselves which are in evidence, reveal that nine employees received performance reviews in the October-November period that were at least satisfactory but received no wage increase at that time. The Respondent's records reveal that these same employees received increases in their hourly wage ranging from \$.25 to \$1.25 in May or June 2001 without any further review being done.³³ All nine employee were identified in Blancato's October 20 memo as being due or overdue for a review and possible wage increase. Other employees who were identified in that memo also received raises in the spring 2001.³⁴ The reviews for these employees are dated around the same time as their increase. These and other employees were also identified in a second memo from Blancato, dated April 16, 2001, listing employees who were still in need of a performance review.³

³² Although several of the General Counsel's witnesses testified that there didn't appear to be any policy, this perception most probably was the result of the Respondent's admitted failure to follow whatever policy it had.

all, a total of 24 employees received wage increases in May or June 2001.

The summary of the Respondent's records also reveals that 12 employees did receive a wage increase in the October–November period, after the Respondent learned about the Union. Only four of these employees (Dixon, Melius, Purcha, and Zuchegna) were identified in Blancato's October 20 memo as due or overdue for a review. The evidence in the record does not indicate whether any of the 12 received a review at the time of their fall 2000 wage increase. Blancato testified generally that those employees who received raises in the fall were "people who had skill sets that the business could not afford to lose." No specific evidence was offered as to the reason any of these 12 employees received a raise at that time.

Blancato testified that he made the decision not to give raises to the nine employees who received reviews in the October-November period. According to Blancato, the Respondent was experiencing a decline in revenue and he was under pressure as the new president to reduce costs. His decision not to give these nine employees a raise was part of a cost-reduction program Blancato claims to have implemented in the fall 2000. Blancato acknowledged that he sent the October 20 memo to his supervisors with the intent of having them adhere to the Respondent's policy of annually reviewing employees' performance for a possible wage increase. He decided however that eight of the nine who were reviewed did not warrant a raise because, as the lowest-skilled employees in the plant, they could be easily replaced if they chose to quit over pay. As to the ninth employee, Thibodeau. Blancato testified that he was already the mosthighly paid hourly employee in the plant and that his rate was competitive with that paid by other employees for similarly skilled individuals. According to Blancato, he believed it was not necessary to give Thibodeau a raise at that time to keep him from leaving. Blancato testified further that he decided to give all nine employees raises in the spring because, by April 2001, his cost-reduction program was having a positive effect. Because the Respondent was nearing the end of its fiscal year, in June, Blancato came to the conclusion that any wage increases given would not adversely affect the Respondent's profits. Blancato testified that this is the reason he issued the April 20 memo asking the supervisors to complete reviews of employees who were still due or overdue for a review. Blancato testified further that he relied upon the October/November reviews to grant the May/June raises to the nine employees in order not to burden the supervisors with administrative tasks.

15. The termination of Pimentel

As noted above, Pimentel was sent home on November 15 after bringing in the note from his doctor advising him, inter alia, to "avoid prolonged postures." Pimentel testified that he heard nothing further from the Respondent until he received the following letter, dated June 5, 2001, from Murphy, the Respondent's human resources manager:

These employees are: Maria Budney, Robert Infante, Robert Israel, Jaroslaw Ogniewski, Wladyslawa Ogniewska, Jean Oliveri, Leonard Preato, Linda Rogers, and Claude (Frenchie) Thibodeau.

³⁴ Hank Archambault, Jeff Parsons, Kurt Parsons, Linda Truskauskas, Roberta Tyree, and Ana Valenzuela.

³⁵ The April 2001 memo listed many of the same employees who had been identified in the October memo, as well as others who were named for the first time.

³⁶ John Calkins, Sandra Calkins, Michael Dixon, Daryl Godsoe, Kevin Hackett, Gordon Marshall, Clifford Melius, Daniel Mogob, Eugene Purcha, Glenn Rich, Rafael Valenzuela, and Alan Zuchegna. The five employees on third shift who received the increased shift differential on November 13 are not included in this group.

We have been advised by our insurance carrier that you have been working at Howmet since February of this year (2001). We have had no correspondence from you concerning your position at Bronson and therefore assume that you have abandoned your job. We have terminated your insurance coverage immediately.

Murphy then advised Pimentel of the cost of continuing insurance coverage under COBRA. She also enclosed forms to elect COBRA and to close out Pimentel's 401(k) account.

Pimentel testified that, upon receipt of this letter, he tried calling Murphy. Although he left two or three messages for Murphy, it was Blancato who finally returned his call. Pimentel indicated to Blancato that he was calling about Murphy's letter. Pimentel told Blancato that he did not abandon his job. Blancato replied that Pimentel didn't understand the letter and then read the letter to him. When Blancato was finished, Pimentel said he did understand the letter and again denied having abandoned his job. He told Blancato that he stopped working when Abraham told him to go home and not to come back until he could work full duty. Pimentel did not testify to any response from Blancato. After this phone conversation, Pimentel went to the Respondent's plant and spoke to Ewing about getting his job back. According to Pimentel, Ewing laughed and told him he had to speak to Cindy Murphy. He waited for Murphy to come in. When she did, she told Pimentel that he had to speak to Blancato. Pimentel then met with Blancato in his office. When Pimentel asked about the letter, Blancato again suggested that Pimentel had misunderstood the letter and read it to him. Pimentel told Blancato he understood the letter and again denied abandoning his job, telling Blancato he only did what Abraham told to do. Blancato then said that the Respondent hadn't heard from Pimentel in 7 or 8 months and asked how could they leave his job open all that time. Blancato asked Pimentel if he was working. When Pimentel said no, Blancato called him a liar. Pimentel then said he had only started working May 21. Blancato again said Pimentel was lying. At that point, Pimentel asked Blancato if he had a job or not and Blancato replied, "[N]o."

Pimentel acknowledged at the hearing that he was working elsewhere when he got the letter from Murphy. According to Pimentel, he received worker's compensation benefits after Abraham sent him home in November. Pimentel's lawyer told him that he had to look for work he could do with the doctor's restrictions in order to continue receiving disability benefits. Pimentel kept a record of the places he looked for work until February 6, 2001. In February, he obtained work through a temporary agency, working at Howmet Corporation. On May 21, 2001, Pimentel became a direct employee of Howmet. Pimentel's job at Howmet is light duty and allows him to sit or stand. Pimentel admittedly did not advise the Respondent directly regarding his new employment. However, the Respondent's worker's compensation insurance carrier would be aware of these circumstances because it paid Pimentel temporary partial disability benefits through January 2001 and entered into a voluntary settlement of his compensation case in April 2001. The records from Pimentel's compensation case show that he reached maximum medical improvement on November 24,

2000. The last medical evaluation, from Dr. Selden on January 30, 2001, indicates that Pimentel had a permanent light-duty restriction. According to Dr. Selden's report, Pimentel was capable of "selective work but should avoid repetitive bending, squatting, lifting, and climbing. Occasional lifting of 20–25 pounds would be appropriate." The Respondent's insurance carrier was sent a copy of this evaluation and agreed to the settlement of Pimentel's claim on April 4, 2001.

Murphy testified regarding the events leading up to the June 5 letter. According to Murphy, sometime in the spring, she received a call from someone at the State Department of Social Services (DSS) regarding a wage garnishment for Pimentel. Murphy told the DSS representative that Pimentel was out on worker's comp. The DSS representative told Murphy that they could have garnished his worker's comp payments if they had known he was receiving them. Murphy testified that she then mentioned to the DSS representative that she had heard that Pimentel was working across the street, at Howmet. The DSS representative said she could investigate that for Murphy. Murphy had a second telephone conversation with the DSS representative in which she was told that DSS had run Pimentel's social security number and determined that he had been working at Howmet since February through a temporary agency. Murphy then called the Respondent's compensation insurer who confirmed that Pimentel was working. According to Murphy, she brought this information to Blancato who decided to terminate Pimentel. She then wrote the June 5 letter and terminated Pimentel's insurance coverage. Murphy testified that she "assumed" that Pimentel had abandoned his job because he was working elsewhere. According to Murphy, that was the sole reason for his termination. Murphy conceded on crossexamination that she made no effort to contact Pimentel before sending him the letter.

Murphy also testified that she was present at Blancato's meeting with Pimentel after the letter was sent. According to Murphy, Pimentel asked if the Respondent had a job for him. Blancato referred him to the letter. Murphy recalled that Blancato may have read the letter to Pimentel. Blancato asked Pimentel if there was something he didn't understand about the letter. When Pimentel said no, Blancato asked if he was working. Pimentel said no. Blancato called him a liar. On cross-examination, Murphy testified that Pimentel may have admitted working after being called a liar. Blancato was not asked about this meeting.

At the time of the hearing, Schaffer was out of work on workers compensation due to a knee injury. Although he had been out of work since January 2001, he was never told by any representative of the Respondent or its insurance carrier that he had to keep in contact with the Respondent. According to Schaffer, his last contact with the Respondent was about 3 months before he testified at the hearing.

16. The discharge of Odorczuk

Odorczuk had been employed by the Respondent since 1984 and was a supervisor on first shift for the last 7 years. In the fall 2000, Odorczuk supervised six—seven employees who worked in an area that he referred to as the blank and turn department and the butt department. Blancato testified that no such depart-

ments existed in 2000, that Odorczuk was the supervisor of the "made-to-order cell." Ewing, who shared an office with Odorczuk, referred to Odorczuk's area as the Kenworth or blank and turn cell and the made-to-order cell. According to Ewing, the latter cell produced a variety of small "butt hinges" using the blank and turn machines. Despite this difference in nomenclature, all the witnesses agreed as to the nature of the work performed in Odorczuk's area and the employee complement he supervised.

There is no dispute that, soon after learning of the union drive, Blancato called Odorczuk and Ewing into his office and told them that they would be fired if Blancato ever found out that they knew anything about the Union and didn't tell him. According to Odorczuk, Blancato also asked him and Ewing at this meeting and on other occasions to talk to the employees, find out what they could about the Union, and report back to him. Odorczuk also testified that Blancato instructed them to try to convince the employees working for them not to go with the Union. Odorczuk conceded that he was not given any specific instructions to threaten or coerce employees. As noted previously, Blancato also instructed them to break up groups of employees that they saw talking. According to Odorczuk, he complied with Blancato's instructions by asking employees about the Union and talking to them about the Respondent's opposition to the Union. Odorczuk did not testify to any specific unfair labor practice he committed in carrying out these instructions and none are alleged in the complaint.

Odorczuk testified that, sometime in the fall, during the union campaign, he had a meeting with Abraham about Tyree. According to Odorczuk. Abraham said they were going to move Tyree to Odorczuk's area and have her work for him because they knew that Odorczuk was not a "favorite" of Tyree. Abraham told Odorczuk he wanted "that b— out of here because every time there's a union meeting she makes a big scene crying about the company." Odorczuk testified that he told Abraham that he would have a hard time firing Tyree because she came into work every day and did her job. Odorczuk told Abraham he did not hire Tyree and he was not going to fire her. Tyree was not transferred to Odorczuk's area after this conversation. Although it is undisputed that some of the machines Tyree worked on were moved to Odorczuk's area, she continued to report to Ewing. Tyree was not terminated. On the contrary, after Odorczuk was terminated, the Respondent appointed her the cell leader in his former cell.

On cross-examination, Odorczuk testified that the Respondent had been trying to get rid of Tyree for some time even before the union campaign, ever since her boyfriend was let go in the spring. Odorczuk also testified that he had more than one conversation with Abraham about getting rid of Tyree but he could not recall when any of these conversations occurred. As described by Odorczuk on cross-examination, it appears the Respondent's "problem" with Tyree related to an incident between her boyfriend and a former manager, Steve Perron. Although Odorczuk testified that Tyree was a good worker, he also claimed that there were some deficiencies in her performance. These deficiencies, as described by Odorczuk, appear to be related to a lack of confidence in her own abilities. Odorczuk also described how emotional Tyree could be, a

characteristic that was evident when she testified at the hearing. Abraham denied having any discussion with Odorczuk about transferring Tyree to his department in order to fire her. According to Abraham, Odorczuk did not even have the authority to fire Tyree or anyone else. Abraham also testified that Tyree was a good worker.

Odorczuk testified further that, soon after Christmas, Ewing told him, while they were commuting to work one day, that there was a rumor that the Respondent was going to fire Odorczuk because someone told Blancato he was involved with the Union. Ewing recalled this conversation differently. He recalled that it was Odorczuk who told Ewing about the rumor and that Ewing told Odorczuk not to believe it. Odorczuk testified that he went to see Abraham about this rumor, but Abraham refused to talk to him. Odorczuk then went to see Blancato. He asked Blancato what was going on and reminded Blancato that he had done everything Blancato asked him to during the union campaign. Odorczuk denied being involved with the Union and asked Blancato who said he was. Blancato told Odorczuk that he could not tell him who said this, but that he had already heard it from three people. Odorczuk testified that he saw Hank Martin, apparently one of the Respondent's owners, when he came out of Blancato's office and that he had a similar conversation with him. Despite the rumors Odorczuk had heard after Christmas, he was not fired at that time. Odorczuk testified that he heard nothing further about these rumors until 2 or 3 weeks before he was terminated. Ewing again told him that he had heard from a good source that the Respondent was going to fire Odorczuk. Odorczuk again spoke to Martin about the rumor. According to Odorczuk, Martin told him that he doesn't interfere with decisions made by his president, that if Blancato wanted to fire him, he was going to fire him. Odorczuk told Martin if he wanted to fire him, go ahead, but "don't fire me for the wrong reason." Odorczuk then reminded Martin of all he had done for the Company and how they had always trusted him, giving him the keys to the plant to lock up, etc. Odorczuk told Martin that the Respondent had trusted him for 10 years, now they don't trust him with the Union. Martin again told Odorczuk there was nothing he could

On June 28, 2001, Dominic Balducci, who was a vice president of the Respondent, called Odorczuk into the office at the end of the day. Abraham was also present. According to Odorczuk, Balducci gave him an envelope with his vacation pay and his final paycheck and told Odorczuk that the Respondent was eliminating his job. No other reason was given. Odorczuk responded by commenting that was a nice way to treat people after 20 years on the job. He questioned why he wasn't even offered another job if they were eliminating his job. He told Balducci and Abraham he could do any job in the company. Balducci's only reply was to tell Odorczuk to call him if he had any questions. On cross-examination, Odorczuk admitted telling Balducci in this meeting that he was being fired because the Company believed he supported the Union. He denied telling Balducci that the Respondent hadn't heard the last of him.

Blancato testified that Odorczuk was terminated on June 28 because his position was eliminated as part of an ongoing cost-

reduction program that the Respondent had undertaken. The Respondent put in evidence several memos purportedly addressing this program. The first is a September 6 memo from Blancato to Spencer indicating that the September revenue target was in jeopardy because of delays at Ford in introducing a new product. In the memo, Blancato refers to material cost reductions and the possibility of subcontracting assembly of some products to Summit as a way to reduce costs. There is no mention of reducing the work force. The second memo is dated September 26 and is addressed to the Respondent's controller, vice president of quality, director of engineering, and vice president of sales. These four managers are instructed to have their "direct reports" prepare goals aimed at, inter alia, cost reduction which could be used quarterly to measure their performance and contribution to the Company. The memo is not addressed to anyone in manufacturing or hourly labor. A memo dated December 15, from Spencer to Blancato on the subject of "EBIT Protection Plan," does refer to cost reductions, including manpower cutbacks, that "must be immediately put into place" in order to deliver the earnings projected in the remaining six months of the fiscal year.

Blancato testified that other personnel were affected by the Respondent's cost-reduction program. According to Blancato, a customer service position, a quality inspector position, and a sales department clerical position were eliminated in February 2001; a quality engineer position was eliminated in April 2001; the receptionist/telephone operator was eliminated in May 2001; a budget analyst was eliminated in July 2001; another quality engineer position was eliminated in October 2001 when the incumbent. Don Mahony, became a vice president; and the tool room supervisor's position was eliminated in November 2001 after the supervisor, Chet Case, guit. These reductions were accomplished primarily through attrition with the Respondent combining or eliminating jobs when an employee left the Company. Blancato acknowledged that no other manufacturing employees were laid off as part of the cost-reduction program.

Blancato acknowledged that Odorczuk was not given any advance notice that his position would be eliminated. Blancato acknowledged further that Odorczuk was not offered any other position in the Company even though he was admittedly a long-term, valuable employee. According to Blancato, there were no other salaried positions to offer to Odorczuk and the Respondent was not adding any direct labor in production.

B. Analysis and Conclusions

1. Credibility

The determination of many of the allegations in the complaint turns on a resolution of conflicting testimony and the credibility of witnesses. In many instances, there are no corroborating witnesses on either side, leaving essentially a "s/he said, s/he said" dispute. In evaluating the credibility of the many witnesses who testified for each side, I have considered a number of factors, including the demeanor of the witnesses. I have attempted to find corroboration, if there is any, in objec-

tive evidence such as business records. I have also considered the extent to which a witness' testimony is internally consistent, as well as consistent with any prior statements that witness has given. I have considered the inherent plausibility of the testimony. I have also considered the fact that a number of the General Counsel's witnesses are still employed by the Respondent. Both the Board and the courts have historically recognized that the testimony of such witnesses that is adverse to their employer is particularly reliable. Flexsteel Industries, 316 NLRB 745 (1995); Georgia Rug Mill, 131 NLRB 1304, 1305 fn. 2 (1961), enfd. as modified 308 F.2d 89 (5th Cir. 1962). Finally, in some situations, it is the omission of a document, or the absence of testimony from a witness, which is in the control of a party and would be expected to have bolstered the party's case, that tips the balance in favor of one side or another. The specific credibility factors relied upon will be discussed as I evaluate the evidence and make my findings.

2. The 8(a)(1) allegations

a. Rules restricting union activity

The second amended consolidated complaint alleges, at paragraphs 7(b), (h), 9(a), 10, and 11, that the Respondent, through various admitted supervisors, orally promulgated rules that either prohibited employees from discussing the Union at work or unlawfully and discriminatorily interfered with their right to engage in union solicitation and distribution. The Respondent, through the testimony of Blancato, has admitted that it had no effective solicitation/distribution rules in place when the Union began its drive to organize the Respondent's employees. There is no dispute that, in the past, employees were free to sell items at work, talk to one another about nonwork related topics and otherwise interact freely, governed only by a commonsense guideline that their activities not interfere with production. Tyree and Schaffer, both still employed by the Respondent, testified credibly that Blancato told them, soon after the October 5 union meeting, that he didn't want them to solicit cards or promote the Union on company time. Although Blancato admitted speaking to Tyree and Schaffer about union solicitation and distribution, he claimed that he told them he had to let them engage in such activity since the Respondent let employees engage in similar activities in the past. According to Blancato, the only thing he told Tyree and Schaffer was not to let it interfere with production. Tyree appeared certain that Blancato did not tell her she could engage in union solicitation/distribution because he let her sell Avon. On the contrary, she recalled that Blancato said that union solicitation "was different." 38 Schaffer clearly understood that Blancato was asking him not to engage in union activity on company time. I credit Tyree's and Schaffer's account of their conversations because it is more believable, it is consistent with the other evidence showing that the Respondent reacted swiftly to stop the Union's

 $^{^{37}}$ EBIT is "earnings before income taxes," a line on the financial statements.

³⁸ The Respondent argues in its brief that Tyree's recollection about this part of her conversation with Blancato doesn't make sense. I disagree. Tyree's version makes much more sense, when considered in the context of the Respondent's reaction to the Union, than the stilted and formal language Blancato claims to have used.

organizing effort, and because they were testifying adversely to their economic interests as employees.

The Board and the courts have recognized that an employer has a right to impose some restrictions on employees' statutory right to engage in union solicitation and distribution. Such restrictions, however, must be clearly limited in scope so as not to interfere with employees' right to solicit their coworkers on their own time or to distribute literature on their own time in non-work areas. Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945); Our Way, Inc., 268 NLRB 394 (1983); Stoddard-Quirk Mfg. Co., 138 NLRB 615 (1962). Accord: United Parcel Service, 327 NLRB 317 (1998), enfd. 228 F.3d 772 (6th Cir. 2000); Jay Metals, Inc., 308 NLRB 167 (1992). If the language used by an employer, such as "company time" or "working hours," is ambiguous, the employer must provide the employees with a clear explanation of the limitations on their right to engage in statutorily protected solicitation and distribution. Ichikoh Mfg., Inc., 312 NLRB 1022 (1993). Blancato's prohibition of union activity during "company time" is thus overly broad on its face. Moreover, the promulgation of a rule in the midst of an organizing campaign, even if the rule is lawful on its face, is strong evidence of a discriminatory motive. Waste Management of Palm Beach, 329 NLRB 198, 200 (1999); Tualatin Electric, Inc., 319 NLRB 1237 (1995); Ideal Macaroni Co., 301 NLRB 507 (1991). See also Wexler Meat Co., 331 NLRB 240, 242 (2000). In the present case, the discriminatory motive is further established by the evidence showing that the Respondent permitted Thibodeau to circulate his petition on work time and in work areas. Premier Maintenance, Inc, 282 NLRB 10. 11 (1986): Montgomery Ward. 269 NLRB 598 (1984); St. Vincent's Hospital, 265 NLRB 38, 40 (1984). In this regard, I credit the testimony of employee Dixon and Schaffer over Thibodeau's claim that he only circulated the petition on nonworktime.

The credible evidence in the record shows that Blancato was not alone in attempting to limit employees' union efforts. Winegar testified that Kisiel told the employees on third shift that he didn't want anyone on his shift discussing the Union in the shop or anywhere on the premises. Although the Respondent attempted to show that Winegar was biased against the Respondent because of a dispute she had over holiday pay when she left employment, Winegar appeared to be testifying truthfully. Moreover, she would have nothing to gain by committing perjury in this proceeding. Kisiel, on the other hand, as a current supervisor of the Respondent, would have reason to conceal any unlawful activity he engaged in. I also find credible the testimony of Pimentel that Abraham told him he didn't want him speaking to the employees about the Union and Odorczuk's testimony that Abraham instructed him and Ewing to break up any groups of employees they saw talking. Although Pimentel and Odorczuk had a tendency to be evasive and argumentative on cross-examination, and displayed difficulty communicating in English, I find their testimony on this aspect of the case credible because they were corroborated by the testimony of Winegar, Tyree, and Schaffer. The testimony of these witnesses establishes that the Respondent became concerned about employees' union activity after learning of the campaign and took steps to limit employees' protected activities in the workplace. The Board has historically found such employer efforts to prohibit employees from talking while they work to be unlawful. See *PPC Structurals, Inc.*, 330 NLRB 868 (2000); *Frazier Industrial Co.*, 328 NLRB 717 (1999); *Emergency One, Inc.*, 306 NLRB 800 (1992).

I found Ewing and Blancato's testimony, that the Respondent was experiencing production problems in the fall because employees were standing around in groups talking instead of working, a convenient after-the-fact justification for an unlawfully broad prohibition of protected activity. The employees who testified for the General Counsel did not appear to be the type who would slack off at work in order to sit around and discuss the Union. The Respondent had never before been concerned about its employees' casual interactions with one another, and wasn't concerned when Thibodeau circulated among the employees soliciting them to sign a petition disavowing Union. Ewing, Abraham, and Blancato were only concerned when the employee talk supported the Union.

Accordingly, based on the above, I find that the Respondent has violated Section 8(a)(1) and (3) of the Act as alleged in paragraphs 7(b) and (h), 9(a), 10, and 11 of the second amended consolidated complaint.

b. The statements and conduct of Blancato

The second amended consolidated complaint alleges, at paragraphs 7 (a), (c)–(g), 12, and 16, that Blancato, the Respondent's president, violated Section 8(a)(1) of the Act through statements he made in the course of one-to-one conversations with employees. Because the only witnesses to these conversations are Blancato and the employee to whom he spoke, resolution of these allegations turns exclusively on credibility.

The bulk of the alleged unlawful statements attributed to Blancato involve two conversations Pimentel testified that he had with Blancato in his office. Blancato essentially denied that these conversations occurred. According to the General Counsel, Blancato violated the Act during these conversations by:

- 1. creating the impression that Pimentel's union activities were under surveillance by telling Pimentel that he knew Pimentel was speaking to the employees about the Union.
- 2. promising Pimentel increased benefits by telling him that "the company can give you anything you want."
- 3. making an implied promise of a job promotion by telling Pimentel that he had scheduled an interview for him for an accounting job in which Pimentel had expressed interest.
- 4. threatening plant closure by telling Pimentel that if a union got in, "we will close the doors."
- 5. making an implied threat by reminding Pimentel that he had a family to support.
- 6. threatening Pimentel with the loss of light duty work by reminding him that he was currently on light duty and suggesting that the Respondent could take that away from Pimentel.

The Respondent argues that Pimentel's testimony is "inconsistent, exaggerated, and, when necessary, resulted from leading

questions from General Counsel." According to the Respondent, Pimentel was "incapable of testifying in an honest, forthright manner." The Respondent's brief is full of quotations from the transcript to illustrate its argument.

Pimentel's testimony was difficult to understand, confusing. and at times incomprehensible. I also noted that he tended to be evasive and argumentative on cross-examination. I also perceived a tendency on his part to exaggerate his role in the union campaign.³⁹ However, a good deal of the confusion in his testimony can be attributed to the fact that he was testifying as to these conversations in English and that he is not especially proficient in the language. When he testified in his native Spanish through the interpreter, his testimony was more lucid. What appeared to be inconsistencies on direct and cross may be nothing more than Pimentel's inability to fully articulate his answers in English. Although I did not find Pimentel to be as dishonest as the Respondent contends, I also did not find him to be entirely credible. 40 The difficulty he displayed testifying in English suggests to me that he may have misunderstood some of what Blancato said to him during their conversations.

Blancato's denial of Pimentel's testimony was not entirely credible either. Blancato had the benefit of testifying about these conversations in his native language from his perspective as a corporate executive, fully cognizant of the consequences for his Company of any admission of wrongdoing on his part. In addition, parts of the conversation described by Pimentel were similar to conversations Blancato had with other witnesses who were credible. I also note that some statements that Pimentel attributed to Blancato were consistent with the themes the Respondent addressed in its campaign to convince the employees that a union wasn't necessary. As often occurs in cases like this, the "truth" about what was said during Blancato's conversations with Pimentel may never be known and, in all probability, may lie somewhere between their two versions of the conversations. I shall nevertheless make findings based on the above factors that I have considered.

Pimentel's testimony that Blancato told him he knew that Pimentel was talking to other employees about the Union is consistent with conversations Blancato had with Tyree and Schaffer in which he indicated his awareness of their union activities. These conversations are also consistent with testimony from Odorczuk that Blancato was interested in knowing who was behind the Union, even threatening Odorczuk and Ewing with termination if he found out that they knew about the Union and didn't tell him. Ewing corroborated Odorczuk as to this threat. Thus, I find Pimentel's testimony as to this part of the conversation credible. The Board has held that such state-

ments, which suggest to employees that the employer is closely monitoring their union activities at a time when the employees are attempting to conceal such activities, unlawfully create the impression of surveillance. *Electro-Voice, Inc.*, 320 NLRB 1094 (1996); *Ichikoh Mfg.*, 312 NLRB at 1023. See also *Hertz Corp.*, 316 NLRB 672, 685 (1995). Cf. *South Shore Hospital*, 229 NLRB 363 (1977). Accordingly, I find that the Respondent violated Section 8(a)(1), as alleged in paragraph 7(a) of the complaint, when Blancato told Pimentel in early October that he knew that Pimentel was talking to people in the Company about the Union.

Pimentel's testimony that Blancato talked about the amount of dues he would have to pay is also consistent with the speeches Blancato and Spencer were giving to the employees early in the campaign. In the context of those speeches, it is more than likely that Blancato talked to Pimentel about the Respondent's ability to provide wage increases and other benefits in contrast to the Union's reliance upon making promises it could not keep ("now is the time the company can give you anything you want"). It is also more likely than not that Blancato spoke to Pimentel about the impact of a union on his ability to support his family and on the Respondent's ability to remain in business ("remember you have a family to support" "if the Union comes in, we'll close the doors"). Although I believe that Blancato discussed these subjects with Pimentel, as he did with employees generally, I cannot credit Pimentel's recollection of the words Blancato used because I am not convinced that Pimentel fully understood what Blancato was saying. It is also possible, based on the difficulty Pimentel displayed in trying to testify as to certain statements in English, as well as the General Counsel's use of leading questions to elicit some of this testimony, that Pimentel did not accurately recall the conversation. These doubts are sufficient to convince me that the testimony is not reliable as evidence of an unfair labor practice. Accordingly, I shall recommend that the allegations that Blancato promised Pimentel increased benefits, and threatened him with plant closure or other unspecified reprisals [paragraphs 7(d) and (f)] be dismissed.⁴¹

Pimentel testified that, during his first meeting with Blancato, Blancato referred to an accounting position in which Pimentel had expressed interest and told Pimentel he had an interview for this position scheduled on the following Monday. Blancato admitted talking to Pimentel about an interview for this job but denied that there was any mention or discussion of the Union in that conversation. Murphy, the Respondent's human resources director, confirmed that Blancato spoke to her about Pimentel's interest in this job and that she scheduled an interview for him. Blancato and Murphy testify that Pimentel did not show up for the interview.⁴² As to this allegation, I credit Blancato's version over Pimentel's testimony. Because of the coincidence in time between his inquiry regarding the job

³⁹ In this regard, it must be noted that Pimentel was not even around during much of the campaign. His doctors' notes in evidence show he was out of work from October 9 through 31 and that he worked only 2 more weeks before being sent home by Abraham on November 15.

⁴⁰ The fact that Pimentel admittedly lied to Blancato in June 2001 when he initially denied that he was working elsewhere, while troubling, is not fatal to his credibility in this proceeding. Although Pimentel may not have been truthful in that conversation, his deception occurred in the context of attempting to save his job after having received the June 5 termination letter. This context is a far cry from the commission of perjury in a legal proceeding.

⁴¹ I shall also recommend that par. 7(c) be dismissed to the extent it is based on this testimony.

⁴² The General Counsel argues that it doesn't make sense that Pimentel would not show up for an interview he sought. Such a scenario does make sense when one recalls that Pimentel left work with another injury on October 9, the Monday after the union meeting, and remained out of work for the rest of that month.

and his conversation with Blancato regarding the Union, Pimentel may have been confused about when and what Blancato said concerning this possible promotion. Because of the many weaknesses in Pimentel's testimony noted above, I cannot find that Blancato promised Pimentel, either implicitly or explicitly, any promotional opportunity to refrain from engaging in union activities. Accordingly, I shall recommend dismissal of paragraph 7(e).

Pimentel testified that, in his second conversation with Blancato, after reminding Pimentel that he had a family to support, Blancato referred to the fact he was currently on light duty and suggested that he could be taken off light duty. Blancato denied making any such threat. Again, I cannot credit Pimentel's recollection of this conversation because of the general weakness in his testimony, attributable to Pimentel's difficulties understanding and communicating in English. Accordingly, I shall recommend dismissal of paragraph 7(g) of the complaint.

Blancato also spoke individually to Tyree and Schaffer regarding the Union. I have already credited both employees as to Blancato's promulgation of a no-solicitation rule in those conversations. For the same reasons, I credit their testimony regarding the remainder of their conversations with Blancato. When Blancato told Tyree to "do him a favor and not have people sign cards on company time," he not only promulgated a new and discriminatory rule, he created the impression that Tyree's activities were under surveillance. There is no dispute that Tyree had not been openly soliciting on behalf of the Union when Blancato approached her at her machine. The reasonable tendency of an employee in Tyree's position would be to draw the conclusion that she apparently did, i.e., that the Respondent was monitoring her activities because she was a union advocate. As noted above, it is a violation of Section 8(a)(1) for an employer to create such an impression among its employees. Electro-Voice, Inc., supra; Ichikoh Mfg., supra.

Tyree also testified that, after she became upset during their conversation at her machine, Blancato invited her into his office. Once there, Blancato told her that he was the new guy in charge and that things would be different. Schaffer testified that, during his first conversation with Blancato about the Union in early October, Blancato said he was aware of employees' concerns about raises and he was working on the problem. These statements echoed the theme of Spencer's first two speeches to the employees that the Respondent had made mistakes and would work to correct them. Such statements amount to an implied promise of benefits if employees refrain from supporting the Union and violate Section 8(a)(1) of the Act as alleged in paragraphs 7(c) and 12(a).

Schaffer testified that, in mid-December, when he asked Blancato about raises, Blancato told him that raises or anything else positive in nature could not happen "while union negotiations were going on." Blancato did not specifically deny this conversation. I credit Schaffer because this statement is similar to statements heard by other employees from their supervisors suggesting that the Respondent had frozen raises because of the pending union election. When Schaffer recalled having this conversation with Blancato, In mid-December, the union election had just been blocked by the Union's unfair labor practice charges. The statement attributed to Blancato by Schaffer is

similar to the remarks made by Blancato in the two speeches he read to the employees after the election was canceled. Blancato's statement to Schaffer was an unlawful threat to withhold benefits from employees because of the Union, in violation of Section 8(a)(1), as alleged in paragraph 12(b).

Because I can find no evidence in the record to support the allegation in paragraph 16 of the second amended consolidated complaint, i.e., that Blancato promised employees improved benefits on December 13 if they renounced their support for the Union, I shall recommend dismissal of this allegation.

c. Alleged threats of plant closure

The second amended consolidated complaint alleges at paragraphs 14 and 15 that the Respondent, through Blancato's speeches in late November early December, and through the display of the poster depicting closed UAW factories, threatened employees with plant closure and job loss if they selected the Union as their representative. The General Counsel argues that the poster, in the context of the overhead projections used and statements made at the Respondent's meetings with the employees, amounted to a prediction of job loss if employees selected the Union as their bargaining representative. The Respondent counters that Blancato's statements and the poster were not threatening. According to the Respondent, this election propaganda contained only the lawful message that a union could not provide job security, in response to the Union's campaign literature promising job security. The Respondent argues that the meetings and poster were permissible employer expressions regarding the consequences of unionization that are protected by Section 8(c) of the Act.

The Respondent contends that the most reliable evidence of what was said at the meetings is the text and Blancato's "trigger points" prepared from that text. This might be true if Blancato had read the text or his trigger points verbatim. There is no dispute that he did not. Rather, he used these documents as a starting point for an extemporaneous speech to the employees. As Blancato himself admitted, it is impossible to say with any certainty that he did not depart from the prepared text in the course of explaining the Respondent's position on the Union. Thus, Blancato's memory of what he said is not qualitatively better than that of the employees who testified without the benefit of notes or prepared texts.

Although the employees who testified on behalf of the General Counsel could not recall everything that was said at the meeting, and at times pleaded a lack of certainty as to the precise phrase or word used by Blancato, their recollection is remarkably consistent with the themes expressed and the language used in the Respondent's prepared texts. Thus, these witnesses recalled that Blancato spoke about other plants, whose employees had been represented by the UAW, that were now closed. The plants identified in the speech were graphically illustrated on the poster and in the overhead projection. Although none of the employees recalled Blancato making a direct threat that, if the employees selected the Union to represent them, the Respondent would close, this was clearly the inference they drew from his statements and the illustrations. In fact, there is substantial testimony that when Schaffer attempted to get information to clarify whether such an inference was warranted, Blancato did not take this opportunity to disabuse the employees of the notion that the Respondent would close. On the contrary, he replied that the same thing that happened at the unionized factories could or might happen here. The testimony of several witnesses, as well as the text of the speeches, reveals that Spencer, not Blancato, discussed the Respondent's own history with unions. Included in that history was the fact that the Winsted plant was built to replace two unionized facilities, one in another part of Connecticut and the other in Chicago.

The Board and the courts have frequently addressed speeches and campaign posters similar to those at issue here. The decisional precedent reflects a constant struggle to balance the 8(c) right of an employer to make his views known and the right of employees to make their decision free from unlawful threats and intimidation. The fact that an employer does not directly threaten employees with plant closure or job loss is not the end of the inquiry. As the Supreme Court itself has recognized, any balancing of these competing interests "must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of their relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear." NLRB v. Gissel Packing Co., 395 U.S. at 617. Under Gissel, when an employer makes a prediction regarding the consequences of unionization,

the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based upon available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment.

Id. at 618. See also *NLRB v. St. Francis Healthcare Centre*, 212 F.3d 945, 954–955 (6th Cir. 2000); *Times-Herald Record*, 334 NLRB 350 (2001); *Wallace International de Puerto Rico*, 328 NLRB 29 (1999); *SPX Corp.*, 320 NLRB 219, 221 (1995). Cf. *Savers*, 337 NLRB 1039 (2002).

The Board, in *Quamco, Inc.*, ⁴³ found unlawful an employer's campaign tactic of displaying a "UAW Wall of Shame," consisting of tombstones with the name of a closed factory where the UAW had represented employees, added one a day leading up to the posting of a tombstone bearing the name of the employer with a question mark the day before the election. The Board held that "the logical inference to be drawn from the expanding cemetery of UAW-represented plants is that the same fate of plant closure and job loss awaited [Quamco]." Id. at 223. The Board held further that "the clear implication of the display [of the final tombstone] was that the fate of the plant would be thrown into question if, and only if, the employees chose union representation." Id. See also *Laser Tool, Inc.*, 320 NLRB 105 (1995) (e

mployer's poster depicting 4 or 5 UAW strikers in front of a factory building displaying a "closed banner," with the legend "Do you want this to happen to you? Vote No," violated Sec. 8(a)(1)).

The Respondent distinguishes *Quamco* and *Laser Tool* factually from the poster and speeches in the instant case. Here, unlike Quamco, the Respondent posted only one poster rather than building up to election day, and made no reference to itself. The Respondent distinguishes the theme of the posters used by it and the employer in Laser Tool. There, the employer directly linked plant closure and job loss to unionization. Here, according to the Respondent, it used the theme of plant closure as a vehicle to show the employees that unionization does not guarantee job security. The Respondent relies, instead, on two cases finding that posters depicting closed factories with the question, "Is this what the Union calls job security?" were lawful. Sheraton Hotel Waterbury, 312 NLRB 304 (1993), enfd. in relevant part 31 F.3d 79 (2d Cir. 1994); EDP Medical Computer Systems, 284 NLRB 1232 (1987). In these two cases, the complaint allegations regarding the posters were dismissed by the respective administrative law judge, without comment by the Board. Because it is unclear from the Board's decisions whether the General Counsel even took exception to these particular findings, the decisions are of limited precedential value.

In a more recent case, currently pending before the Board on exceptions, an administrative law judge found that a poster nearly identical to the one used by the Respondent here, when considered in the context of a series of speeches remarkably similar to those made by Blancato and Spencer in the instant case, amounted to an unlawful threat of plant closure and job loss. *Stanadyne Automotive Corp.*, Case 34–CA–9365 [JD(NY)–56–01, November 9, 2001]. Although the judge's decision is not binding precedent for the instant case, I have considered his analysis, as well as the analyses of the administrative law judges who decided the cases relied upon by the Respondent, in applying Board precedent to the facts here.

I find the Respondent's attempt to differentiate the campaign tactic here from those used by the employers in Quamco and Laser Tool disingenuous. Whether one calls the theme "job loss" or "job security," the logical inference from the poster used by the Respondent and the points made by Blancato and Spencer at the meetings, is that a vote for the Union will threaten their future employment. Although couched in terms of "economic realities," the Respondent omitted from its campaign speeches any objective facts that would demonstrate that the plant closings used to illustrate its points were caused by anything other than the fact that the "strike happy" UAW represented the employees. To make sure the employees did not miss the implication, Spencer related how the Respondent itself chose to close union-represented facilities and move work to the non-union Winsted plant after a series of union strikes. Blancato then told the employees "where there are unions, there are strikes," driving home the inevitable linkage between unionization and job loss. Blancato's disclaimer immediately before this statement, that "strikes are not inevitable" was meaningless in the context in which it was used. The most telling evidence is the fact that, when Blancato had an opportunity to disavow any implication of a threat in response to Schaffer's

⁴³ 325 NLRB 222 (1997).

question, he chose not to. Instead, he told the employees that the same fate that befell the employees at other UAW plants "could" or "might" happen in Winsted. As the Supreme Court so eloquently stated, in *Gissel*, an employer "can easily make his views known without engaging in brinkmanship. . . . At least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees." 395 U.S. at 620 (citation omitted).

I find, based on the above, that the Respondent, through Blancato's and Spencer's statements to employees during the speeches on November 22 and 28 and December 5, and by the display of the plant closing poster and overhead projections during the period in late November and early December, violated Section 8(a)(1) of the Act by implicitly threatening its employees with plant closing and job loss if they voted for union representation. Although the complaint, at paragraph 14, did not allege Spencer as the Respondent's agent in making such threats, the evidence in the record shows that it was Spencer who told employees about the Respondent's union history and the closed Beacon Falls and Chicago facilities. These statements, while not unlawful in themselves, provided part of the context in which the Respondent conveyed its implied threat to the employees. Under these circumstances, the General Counsel's failure to specifically name Spencer in connection with this allegation does not preclude the finding of an unfair labor practice based in part on his conduct. I note that it was evidence offered by the Respondent, i.e., the testimony of Blancato and the prepared texts of the speeches, that established Spencer's role in the commission of this unfair labor practice. Because the Respondent was on notice regarding these facts before the General Counsel even rested her case, it is not now prejudiced by reliance upon Spencer's statements as a basis for this finding. I also note that the Respondent was aware of Spencer's role, yet chose not to call him as a witness, either to corroborate Blancato, or to refute the testimony of the General Counsel's witnesses.

d. Statements regarding the EN-114 machine

Paragraph 13 of the second amended consolidated complaint alleges that the Respondent threatened employees with job loss by (a) removing the EN-114 machine from its facility; and (b) statements of Abraham and Ewing to employees indicating that the machine was removed because of their union activities. It should be noted that the complaint does not allege that the removal of the machine itself violated Section 8(a)(1) and (3) because motivated by the employees' union activity. The General Counsel's theory of the case, based on the way the allegation is drafted, is that the Respondent used the removal as a device to threaten the employees without regard to the motive for its removal.

The General Counsel relies on the testimony of Dixon and Odorczuk regarding statements they heard Abraham make when the EN-114 machine was sitting in the aisle awaiting shipment to Summit, and the testimony of Pimentel regarding statements he heard Ewing make during the same time period. Although the statements recalled by the General Counsel's witnesses were similar, they occurred at different times. Thus, the individual recollections of the three witnesses were not

corroborated by other witnesses who may have been present when the statements were made. As noted above, Ewing denied making the statements attributed to him by Pimentel. Although Abraham confirmed Dixon's testimony to a significant degree, he denied making any reference to the Union and denied saying anything to Odorczuk about the EN-114.

Although the General Counsel and the Respondent proffered conflicting arguments, and supporting testimony, on the question of employer motive, it is unnecessary for me to resolve this issue. Because the removal of the machine and the statements allegedly made by Abraham and Ewing are alleged only as violations of Section 8(a)(1), motive is irrelevant. The sole inquiry, once credibility issues are resolved, is whether the statements and conduct would reasonably tend to interfere with, restrain or coerce employees in the exercise of protected activity. This is an objective test. El Rancho Market, 235 NLRB 468, 471 (1978), citing American Freightways Co., 124 NLRB 146, 147 (1959). Thus, even if the employer had a legitimate business reason for subcontracting assembly work to Summit and removing the EN-114 machine, the circumstances and timing of the move in the context of contemporaneous statements by supervisors could be found unlawful if employees could reasonably infer that the Respondent had decided to subcontract the work because they were seeking union representation.

There is no dispute that the EN-114 machine was shipped to Summit in November, after the employees had attempted to present the Union's demand for recognition, first to Blancato and then to Abraham and Ewing. I credit the testimony of the General Counsel's witnesses that the machine was allowed to sit on a pallet, packed and ready for shipment, for several days before its removal. No explanation was given to the employees during this time as to the reason for the removal of this machine. Thus, even assuming that Blancato and Larson are credited as to the date when the decision was made and negotiations over the subcontracting concluded, there is no evidence that the Respondent informed the employees that it had decided to subcontract assembly work to cut costs.44 The only explanation provided by the Respondent for the sight of the EN-114 machine out of service and on its way out the door would be the statements attributed to Abraham and Odorczuk.

Of the witnesses who testified on this issue, I found Dixon to be the most credible. He is a current employee of the Respondent and displayed obvious discomfort testifying adversely to his employer. Blancato, the Respondent's president, was in the hearing room when Dixon testified. Ewing is still his supervisor. I conclude that his inability to recall with certainty precisely what Abraham said about the Union in connection with the removal of the EN-114 machine was a matter of self-preservation rather than a lack of credibility. It is clear that he did recall Abraham making some comment about unionization relating to the presence of the machine in the aisle packed and ready to be shipped. Abraham admitted that he made the comment, "there goes the EN-114 machine. These things happen." It is not much of a stretch to arrive at the conclusion that "these

⁴⁴ Dixon testified that the first time he heard that Summit had anything to do with the removal of the EN-114 machine was in 2001, "after the end of all of this stuff."

things" include removal of work and that they "happen" when a union is around.

I also credit the testimony of Pimentel and Odorczuk over Ewing's and Abraham's denials with respect to this allegation. Although I found some problems fully crediting Pimentel regarding his conversations with Blancato and will note some weaknesses in Odorczuk's testimony with respect to other allegations, their testimony here is consistent with Dixon's testimony that Abraham linked the removal of this machine to the ongoing union campaign. When considered in the context of the speeches that Blancato was to give to the employees in a few weeks, it becomes apparent that the Respondent decided to use its subcontracting decision as a means of dramatically illustrating one of the principal themes of its campaign, i.e., union representation is a threat to job security.

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 13(a) and (b) of the complaint. *Garry Mfg. Co.*, 242 NLRB 539, 542 (1979), enfd. 630 F.2d 934, 940–941 (3d Cir. 1980).

e. Other statements and conduct of Respondent's supervisors

The second amended consolidated complaint, at paragraph 8, alleges that the Respondent, through Ewing, violated Section 8(a)(1) by: (a) imposing more onerous working conditions on Pimentel; and (b) threatening to withhold a wage increase if employees did not reject the Union as their bargaining representative.

The first allegation is based on Pimentel's testimony that, between the October 5 union meeting and when he stopped working on November 14, he was followed by Ewing or Simmons, his lead person, anytime he left his work area. Pimentel also claimed that they stopped him from talking to other employees when he walked around the plant in the performance of his job duties. Although Ewing denied this allegation, he admitted talking to Blancato about complaints from Simmons that Pimentel was spending too much time away from his work area, congregating with other employees. Blancato corroborated Ewing as to the receipt of these complaints and testified that he spoke to Pimentel about them. Simmons did not testify. I do not credit Pimentel's testimony that he was followed every time he moved, even to go to the bathroom. I found this testimony to be an example of his tendency to exaggerate the facts. In reality, Pimentel was absent from work for almost the entire month of October. By the time he returned to work on November 1, the Union had completed its solicitation of authorization signatures and was in the process of filing the representation petition and negotiating for an election date through the Board's Regional Office. It is unlikely that there was much reason or opportunity for Pimentel to speak to his coworkers about the Union in the 2 weeks in November before he was sent home by Abraham. In addition, Pimentel's testimony that he was required to use the forklift and move about the plant as part of his light-duty work is not an accurate description of the nature of the work he was doing in the October-November period. While he may have done these things months earlier, after he first injured himself, he was limited to hand assembly at a workstation by the fall. Although I do not doubt that Ewing would have been concerned by the sight of Pimentel away from his work area or

talking to employees, the evidence does not support a finding that the Respondent "imposed more onerous working conditions on Pimentel by following him throughout the facility." The only condition imposed on Pimentel when he was at work after the union meeting was that he do the work he was supposed to be doing. Accordingly, I shall recommend dismissal of paragraph 8(a) of the complaint.

The second allegation regarding Ewing is based on the testimony of Thibodeau regarding conversations he had with Ewing after his October 31 performance review. As noted above, Ewing told Thibodeau he could expect a raise based on that review. When Thibodeau still had not received a raise by Thanksgiving, he asked Ewing where his raise was. According to Thibodeau, Ewing told him that he could not discuss the raise with Thibodeau at that time, that everything was frozen because of the Union and that the Respondent would have to wait "until the Labor Board was done." I detected a certain reluctance on Thibodeau's part when testifying as to his conversation with Ewing. The General Counsel had to show Thibodeau his affidavit, given not long after these events, before he would confirm Ewing's allegedly unlawful statement. Although Ewing denied making such a statement to Thibodeau, I credit Thibodeau, and in particular his recollection as recorded in the affidavit. Thibodeau is another current employee of the Respondent. He was being asked to testify adversely to his current supervisor, Ewing, with his Employer's president, Blancato, sitting in the room. I also note, in light of his efforts to convince the Union to withdraw its petition, he is not a witness who would be expected to testify favorably for the Union. Thus, to the extent he gave any testimony in support of the General Counsel's case, he was particularly credible. It is clearly unlawful for an employer to promise an employee a raise on the one hand and then tell the employee that he could not be given that raise because of the pending union campaign. Met West Agribusiness, Inc., 334 NLRB 84 (2001); Centre Engineering, Inc., 253 NLRB 419, 420-421 (1980). Accord: Wellstream Corp., 313 NLRB 698, 707 (1994). Accordingly I find that the Respondent violated Section 8(a)(1), as alleged in paragraph 8(b) of the complaint, by Ewing's statement to Thibodeau.

The second amended consolidated complaint alleges, at paragraph 9, that the Respondent violated Section 8(a)(1) of the Act, through Third-Shift Supervisor Kisiel, by creating the impression of surveillance; informing employees it would be futile to select the Union as their bargaining representative; and threatening employees with unspecified reprisals if they select the Union as their bargaining representative. ⁴⁵ This allegation is based upon the testimony of Winegar regarding the conversation she had with Kisiel at her machine a couple days after she signed the union petition at the Log House. According to Winegar, Kisiel initiated the conversation by saying, "I'm sure you heard that the Union is trying to get in and that some people think it will help, but it's just going to hurt." I credit Winegar's testimony over Kisiel's denial that he made any such

⁴⁵ Par. 9 also alleged that Kisiel unlawfully promulgated a rule prohibiting employees from discussing the Union. I have already addressed this allegation in sec. II,B,2,a above.

statements. Although Winegar is no longer employed by the Respondent, she had nothing to gain by fabricating such testimony. Even assuming she bore some grudge against the Respondent over its refusal to pay her holiday pay after she gave her notice, this would hardly lead to a conclusion that she was willing to perjure herself to get back at the Respondent.

Winegar had signed the Union's petition, but was not a member of the organizing committee, nor otherwise active in support of the Union. When Kisiel approached her and raised the subject of the Union, the employees were in the early stages of the campaign. Winegar, in particular, had done nothing to indicate to Kisiel her views on the Union. In these circumstances, Kisiel's statement, "I'm sure you heard that the Union is trying to get in," would reasonably tend to convey the impression that the Respondent had employees' union activities under surveillance. Electro-Voice, Inc., supra; Ichikoh Mfg., supra. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act, as alleged in paragraph 9(b). Kisiel's statement that some people thought the Union would help, but "it's just going to hurt," if considered in isolation, would be too ambiguous to amount to either a statement of futility or a threat of unspecified reprisals. Ohmite Mfg. Co., 217 NLRB 435 (1975); Liberty Mutual Insurance Co., 194 NLRB 1043 (1972). However, the Respondent's other unfair labor practices "imparted a coercive overtone" to this statement. Reno Hilton Hotel, 319 NLRB 1154, 1155 (1995), and cases cited therein. In the context of the Respondent's other threats, it would be reasonable for an employee to believe that Kisiel was threatening unspecified reprisals if employees chose union representation. Accordingly I find that the Respondent violated the Act. as alleged, in paragraph 9(d). On the other hand, Kisiel's statement, while threatening, was not a statement of futility. Cf. St. Luke's Hospital, 258 NLRB 321, 322 (1981). This statement does not convey the notion that the Respondent would refuse to bargain with the employees' designated representative, or otherwise engage in conduct to frustrate the employees' selection of union representation. Accordingly, I shall recommend that paragraph 9(c) of the complaint be dismissed.

f. The third-shift wage increase

Paragraph 17 of the second amended consolidated complaint alleges that the Respondent violated Section 8(a)(1) of the Act, in about late November, by granting its third shift employees a wage increase. There is no dispute that the Respondent increased the shift differential for its third-shift employees from 10 to 15 percent effective November 13. This increase was given soon after the Union filed its petition and just before the Respondent entered into the stipulated election agreement. The Respondent contends that it granted this increase at the request of Third-Shift Supervisor Kisiel. His written request for an increase in the shift differential is dated November 10, also well after the Respondent learned of the Union's efforts to organize its employees. Kisiel attempted to place the decision earlier by testifying that employees on third shift first voiced complaints about the shift differential being the same for second and third shift about a month after the third shift started, this would be about mid-October. The Respondent gave its first speech to employees, acknowledging its awareness of the Union's organizing drive in late September or early October. Kisiel himself admitted that he was aware of the Union when he made his request to Blancato that the third-shift differential be increased.

It is well settled that the grant of wage increases or other benefits during the preelection period is presumptively unlawful because employees would reasonably view such conduct as an attempt to interfere with or coerce them in their choice of union representation. An employer may rebut this presumption, however, by demonstrating a legitimate business reason for the timing of the raise. *Southgate Village, Inc.*, 319 NLRB 916 (1995). Accord: *Audubon Regional Medical Center*, 331 NLRB 374 fn. 5 (2000). As the Supreme Court recognized, many years ago:

The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

NLRB v. Exchange Parts Co., 375 U.S. 405, 409 (1964). Here, this inference was supported by statements made by Blancato in his speeches to the employees that only the Respondent could make good on its promises. The Respondent cannot show in this case that a decision to increase the pay differential for third-shift employees was made before it acquired knowledge of the Union's campaign. It's own witnesses admit that the subject was not even discussed before mid-October at the earliest. The Respondent also cannot show any practice regarding a third shift differential because it did not have a third shift until September 18. When third shift started, the Respondent offered its employees the same differential it was offering to secondshift employees. Only after the Union appeared on the scene and the Respondent learned that the third-shift employees were unhappy with only a 10-percent differential, did the Respondent decide to grant an increase. The fact that the Respondent granted this increase in wages at a time when it claims to have been in a cost-cutting mode casts further suspicion on the timing of the decision and undermines any business justification for the raise.

Based on the above, I find that the Respondent violated Section 8(a)(1) of the Act, as alleged in the complaint, by granting its third-shift employees an increase in the shift differential on November 13, in the midst of the election campaign.

g. The spring 2001 wage increases

Paragraph 7 of the complaint in Case 34–CA–9829 that issued on November 15, 2001, was amended at the hearing to allege that the Respondent violated Section 8(a)(1) and (3) of the Act by granting wage increases in May and June 2001 that had been withheld from employees in October–November because of the Union. When the General Counsel amended this allegation at the hearing, the Respondent argued that the new allegation was barred by Section 10(b) of the Act because it was not supported by a charge filed within 6 months of the alleged unfair labor practice. The Respondent renewed this argument in its brief. Before turning to the merits of this allegation, I must address the 10(b) issue.

The Board has held that, when General Counsel amends a complaint at the hearing, the new allegation must be "closely related" to a timely filed charge in order to satisfy the requirements of Section 10(b) of the Act. Redd-I, Inc., 290 NLRB 1115 (1988). In that case, the Board adopted a three-part test to determine whether the amended allegation is sufficiently related to the charge: (1) Does the new allegation involve the same legal theory? (2) Does the new allegation arise from the same factual circumstances or sequence of events? and (3) Would a respondent raise similar defenses to the new allegation? Id. at 1116. See also Nickles Bakery of Indiana, 296 NLRB 927 (1989). In applying this test, the Board has held that the requisite factual relationship may be based on acts that arise out of the same antiunion campaign. Office Depot, Inc., 330 NLRB 640 (2000); Ross Stores, Inc. 329 NLRB 573 (1999).

The initial charge, which was filed and served well within the 6-month period required by the statute, alleged that the wage increases granted by the Respondent in 2001, during the pendency of the representation proceeding, were contrary to past practice and violated Section 8(a)(1), (3) and (5). When the complaint issued, it alleged at paragraph 7 that the Respondent's grant of wage increases in about May 2001 violated Section 8(a)(1) of the Act. The complaint was consolidated with the consolidated complaint that had previously issued in Cases 34-CA-9499, et al., alleging numerous violations of Section 8(a)(1) and (3) of the Act related to the Respondent's conduct in response to the Union's organizational campaign. Among the allegations in the earlier complaint were claims that the Respondent threatened to withhold wage increases in the course of its preelection campaign. It is clear that the new allegation, as well as the allegations in the underlying charges and complaints, all related to the same antiunion campaign. The new allegation involves the same sections of the Act, the same legal theory, and the same sequence of events. One would also expect a respondent to raise similar defenses to the amended allegation as it would have to the timely allegation originally pleaded at paragraph 7, i.e., that it granted wage increases in the spring 2001 for reasons other than the pendency of the Union campaign. Applying the Redd-I test here, I find that amended paragraph 7 is closely related to the underlying charge which was filed within the 6-month period required by the statute.

The evidence described above establishes that, at the time the Union began organizing the Respondent's employees, the Respondent was not following its policy of conducting annual performance reviews as a basis for granting wage increases. It is clear there was no rhyme or reason as to when, or even if, an individual employee would receive an increase. This is one of the main concerns that led some employees to seek union representation. The evidence also establishes that one of the Respondent's first acts, once it became aware of the Union, was to meet with its employees, acknowledge its failure to follow this policy, and assure them that the policy would be followed in the future. Within a couple weeks of this meeting, Blancato

instructed his supervisors, by memo, to conduct performance reviews for 29 employees who were "due or overdue" for a review. Although Blancato's memo does not explicitly state that these employees would get wage increases following their reviews, he clearly implied this would be the result by reminding the supervisors that the reviews would be the basis for determining wage increases. Blancato's eagerness to follow the Respondent's policy in October contrasts with his reaction to Odorczuk's request, 6 months earlier, that Blancato give a raise to one of the employees in Odorczuk's department who had not had a raise for so long she was falling behind new hires. Blancato told Odorczuk if the employee didn't like it, she could leave. 47

The undisputed evidence also reveals that several of the Respondent's supervisors, such as Ewing and Odorczuk, responded to Blancato's memo by completing reviews for a number of employees. Credited testimony establishes that Ewing, Kisiel, and Odorczuk told employees that they would most likely be getting a raise. The Respondent's records reveal that, in fact, 12 employees received raises in October or November. Only four of these employees, however, had been identified in Blancato's memo as due or overdue for a raise. The other 25 employees named in Blancato's memo did not receive any wage increase, including nine who received performance reviews that were at least satisfactory.⁴⁸

The Respondent's records establish that 24 employees did receive wage increases in the period from late April to early June 2001, including the nine employees who had received reviews but no raises in the fall. Because the Respondent did not conduct new performance reviews for these nine employee before giving them a raise, it must be inferred that the level of their performance shown by the earlier reviews was sufficient to justify the raise. The Respondent's records show that another six employees who had not received a review in the fall, despite being identified by Blancato in October as in need of one, received reviews and raises in April–June 2001. I find, based on this incontrovertible evidence, that at least nine, and perhaps as many as 25, employees who should have received a raise in October–November under Blancato's memo, had raises withheld for 6 months.

On these facts, I must determine whether the Respondent, by delaying wage increases for some employees for 6 months,

from this that the Respondent would be providing wage increases because the performance reviews had historically been the basis for such increases. Spencer's doublespeak was typical of the mixed messages the Respondent gave throughout the campaign. See, e.g., Blancato's statement in his December 5 speech, "strikes are not inevitable," followed almost immediately by, "where there are unions, there are strikes."

⁴⁶ While Spencer, speaking for the Respondent, apparently told the employees that it could not make any promises during the union campaign, he nevertheless did promise to follow the Respondent's policy of conducting performance reviews. The employees could logically infer

⁴⁷ I credit Odorczuk's testimony, which was not denied by Blancato. I also note that the statement attributed to Blancato is akin to the rationale he provided on the witness stand when explaining why he did not give this same employee a wage increase in October after Odorczuk had complied with Blancato's instructions and conducted a review of her performance.

⁴⁸ As previously indicated, there are no reviews in evidence for the 12 employees who received raises in the October–November period. Thus, one can only speculate as to the particular reason any of these 20 were deemed worthy of a raise at that time.

engaged in conduct that would reasonably tend to interfere with, restrain or coerce employees in the exercise of their Section 7 rights, or whether the Respondent delayed the grant of these wage increases for discriminatory reasons. I have already found, based on the credited testimony of Schaffer, Thibodeau. and Winegar, that the Respondent's agents advised employees in November and December that wage increases it had promised could not be given because of the pending union election. In addition, the Respondent's conduct with respect to the grant of wage increases must be considered in the context of the speeches Blancato gave in November and December indicating that only the Respondent can grant wage increases, that only the Respondent has the ability to make good on its promises. This evidence and the animus it reveals is sufficient to establish a prima facie case that the employees' union activities were a motivating factor in the Respondent decision to withhold wage increases from employees in the fall and to grant them after the union activity had subsided 6 months later. It is immaterial whether the Respondent was aware of the specific union activity of the individual employees affected by its conduct. For the type of violation alleged here, it is sufficient that the Respondent was aware of union activity generally, that it was opposed to that activity and was engaged in a campaign to prevent the Union from achieving representation rights. See *Electro-Voice*, Inc., 320 NLRB at 1095 fn. 4.

To rebut this evidence suggesting an unlawful motive, the Respondent proffered an economic justification for its actions. Blancato testified that the Respondent withheld wage increases from the nine employees who received reviews in October and November because of financial constraints and because these particular employees either were already paid too much, or were so unskilled that they were expendable. Although the relative skills and pay of these employees had not changed in six months, Blancato claims he was able to give these nine employees a wage increase in April and May because the Respondent's financial condition had improved and an increase at that time, shortly before the end of the fiscal year, would not have a significant adverse impact on the bottom line. I find this self-serving and unsubstantiated testimony unconvincing. Blancato's credibility is undermined in part by the fact that he gave a 5-percent increase to the six relatively unskilled employees on third shift at about the same time he decided to save money by not giving eight unskilled employees who had received overdue reviews any raise at all. Blancato's credibility is further undermined by the absence of any evidence that the 12 employees who did receive a raise in October and November had any particular skills needed by the Respondent that would have justified this additional expense at a time of claimed financial constraint. Finally, the Respondent did not even attempt to substantiate its economic justification with records, such as a financial statement, that would have shown whether it even had any financial problems at the time.

The Respondent argues that it found itself "between a rock and a hard place" because the Union could have alleged an unfair labor practice whether the employer did or did not grant raises. If the Respondent found itself in such a place, it was of its own doing. Because the Respondent had not been following its policy for some time before the Union arrived, it should not

have promised the employees that it would follow the policy at the first whiff of union activity. Moreover, once the Respondent decided it would act as if it had a well-established policy that had been consistently followed, it should have adhered to its decision rather than do an about-face and withhold a raise it had just promised. See *NLRB v. Aluminum Casting & Engineering Co.*, 230 F.3d 286 (7th Cir. 2000); *Noah's Bay Area Bagels, LLC*, 331 NLRB 188 (2000). Considering the expert legal advice available to the Respondent, it is hard to believe that the Respondent could not have safely navigated the shoals of this election campaign. The Respondent's conduct here appears to have been a carefully orchestrated campaign to convey the message evident throughout the text of the speeches, i.e., only the Respondent can provide for the employees, and a union will only interfere with the employer's ability to do so.

h. The termination of Odorczuk

The second amended consolidated complaint, at paragraphs 21 and 22, alleges that the Respondent violated Section 8(a)(1) on June 28, 2001, by discharging its supervisor, Odorczuk, because he refused to commit an unfair labor practice. The Respondent contends that Odorczuk was laid off when his position was eliminated as part of a cost-cutting program. It is wellsettled that a statutory supervisor has no right under the Act to engage in union or other concerted activities protected by Section 7 of the Act. The Board has found a supervisor's termination unlawful under the Act in a few very limited situations. Thus, an employer may not discharge a supervisor for giving testimony adverse to the employer in a Board proceeding or during the processing of an employee's grievance under a collective-bargaining agreement, for refusing to commit unfair labor practices, or for failing to prevent unionization. The protection afforded a supervisor in these situations "stems not from any statutory protection inuring to them, but rather from the need to vindicate employees' exercise of their Section 7 rights." Parker-Robb Chevrolet, Inc., 262 NLRB 402, 402-404 (1982), review denied sub nom. Auto Salesmen's Local 1095 v. NLRB, 711 F.2d 383 (D.C. Cir. 1983).

There is no dispute that Odorczuk was a statutory supervisor during the union campaign. There is also no dispute that Blancato threatened to fire Odorczuk and Ewing if he found out they were involved in the union organizing drive. Odorczuk testified that Blancato asked him to talk to the employees, find out what was going on and to report back to him. He testified that Blancato also asked him to talk to his employees and convince them to vote against the Union. In December, according to Odorczuk, Blancato asked him to talk to the employees about signing the petition being circulated by Thibodeau. Odorczuk testified that, as a loyal supervisor, he complied with all of these instructions. The only instruction Odorczuk claims he refused to carry out was Abraham's directive that the he was to supervise Tyree and assist in bringing about her termination. According to Odorczuk, Abraham said he wanted "that b- out of there because, every union meeting, she was always crying about the company." Abraham denied having any such conver-

⁴⁹ Odorczuk conceded that, even as a supervisor, he had no authority to fire Tyree.

sation with Odorczuk. Blancato and Abraham both testified that Tyree was a good worker and that the Respondent had offered her a cell-leader position before this conversation allegedly occurred. In fact, after Odorczuk's termination, Tyree became the cell leader of his area with a \$.50/hour raise.

Determination of this allegation turns entirely on credibility because the only alleged unfair labor practice Odorczuk refused to commit is Abraham's directive to get rid of Tyree. If Odorczuk is not credited, then no such instruction was given and the General Counsel's case falls. Although I have credited Odorczuk's testimony with respect to several allegations already discussed, I did not find him to be a credible witness when it came to his own case. Odorczuk was often not responsive to questions, even those asked by the General Counsel. There were many occasions when the General Counsel had to interrupt Odorczuk and get him back on track. Much of Odorczuk's testimony had to be elicited by leading questions from the General Counsel. It appeared that Odorczuk had his own agenda on the witness stand. He had a story to tell and he wasn't about to let something like direct examination get in the way. I also observed that Odorczuk had a tendency to exaggerate and displayed a great deal of hostility and bitterness toward the Respondent and its management, particularly Blancato. Although Odorczuk's bitterness is understandable in light of the manner in which the Respondent terminated him after 17 years of good and faithful employment, that bitterness appeared to poison his testimony, rendering it unreliable as a basis for finding an unfair labor practice.

Odorczuk's credibility as to Abraham's alleged instruction to help the Respondent "unload Tyree" is particularly suspect. Odorczuk evaded the efforts of both the General Counsel and the Respondent to place this conversation in time. On direct, Odorczuk testified it occurred "during the meeting-I mean the union stuff." In response to a leading question, he testified that his conversation with Abraham occurred "in the Fall of last year." On cross, Odorczuk said that he had more than one conversation with Abraham about getting rid of Tyree, and that the Respondent had been trying to get rid of her for a long time, since her boyfriend was terminated in the spring 2000. Although Odorczuk, on direct, claimed that the reason Abraham wanted to get rid of her was because of her activity at union meetings, on cross he suggested that the Respondent had other reasons to want Tyree terminated, including problems with her job performance. Tyree's apparently fragile emotional state that caused her to break down on the witness stand does lend some support to Odorczuk's testimony. The fact that some of Tyree's machines were moved to Odorczuk's area might also support his testimony. Unfortunately, Odorczuk's testimony is too unreliable to link any concerns that the Respondent had about Tyree's emotional state to her union activity, or to establish that the machines were moved during the union campaign. In light of Odorczuk's constantly shifting answers on this key matter, and in the absence of other evidence to corroborate his testimony, there is simply no foundation to support a finding that the Respondent devised a scheme to terminate Tyree because of her union activity and attempted to enlist Odorczuk in carrying it out.

The General Counsel argued that the Respondent's asserted justification for Odorczuk's termination was not credible and that the only plausible explanation was that the Respondent terminated him for refusing to commit this unfair labor practice. Although I agree with the General Counsel that the Respondent's defense is not credible. I disagree that her theory is the only plausible explanation for Odorczuk's termination. Blancato's testimony that he laid off a 17-year employee, who admittedly was knowledgeable in the Respondent's operations and had been a valuable employee, as part of a cost-cutting program is unconvincing. On cross-examination, the General Counsel was able to show, in virtually every case, that positions were consolidated or eliminated only after the incumbent employee had voluntarily left the Respondent's employment. Odorczuk appears to have been the only employee who was involuntarily separated as a result of the Respondent's efforts to reduce expenses. In addition, three memos that the Respondent introduced into evidence to substantiate the existence of such a cost reduction program had not been furnished to the General Counsel in response to a subpoena requesting all records showing the basis for the Respondent's decision to terminate Odorczuk. Although I did not find any evidence that the Respondent engaged in a conscious refusal to comply with the subpoena in order to obstruct the General Counsel's investigation, the Respondent's failure to furnish such evidence until late in the hearing is suspect. If these memos were in fact part of Blancato's decisionmaking process and would have supported the position the Respondent took in response to the charge, one would think the Respondent would have been quick to disclose them. Moreover, as noted above in my discussion of these memos, they do not directly address Odorczuk's position and are dated 6 to 9 months before his termination. The Respondent offered no other documentary evidence in support of Blancato's testimony, giving rise to an inference that the Respondent's records would not have supported his self-serving testimony. The only plausible explanation for the Respondent's termination of Odorczuk that is supported by the evidence in the record is that Blancato believed Odorczuk was involved in the employees' efforts to get a union. That was the rumor circulating in the plant after the Christmas holidays. Blancato even told Odorczuk at that time that he had heard from three or four people that Odorczuk was involved with the Union. 50 By terminating Odorczuk, Blancato carried out his threat to Ewing and Odorczuk that he would fire them if he ever learned they were involved with the Union. The Respondent's termination of Odorczuk, even if this were the motivation, is not unlawful under the Act. Parker-Robb Chevrolet, Inc., supra.

3. The 8(a)(3) allegations

The second amended consolidated complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by denying overtime to Roberta Tyree since about early October (pars. 18 and 23) and by denying light duty work to Tony Pimentel on November 15 (pars. 19 and 23).⁵¹ The test for determining

⁵⁰ I credit Odorczuk's testimony regarding this conversation with Blancato.

⁵¹ The second amended consolidated complaint also alleged that the Respondent's promulgation of rules prohibiting employees from talking

whether the Respondent's actions involving these two employees violated Section 8(a)(3) is the Board's Wright Line test.⁵ Under this test, the General Counsel bears the initial burden of proving by a preponderance of the evidence that protected activity was a motivating factor in the employer's decision to deny Tyree overtime and Pimentel light-duty work. To meet this burden, the General Counsel must offer evidence of union or other protected activity, employer knowledge of this activity, and the existence of antiunion animus that motivated the employer to take the action it did. The Board has recognized that direct evidence of an unlawful motivation is rarely available. The General Counsel may meet his burden through circumstantial evidence, such as timing and disparate treatment, from which an unlawful motive may be inferred. See Naomi Knitting Plant, 328 NLRB 1279 (1999), and cases cited therein. If the General Counsel meets his burden, then the burden shifts to the respondent to prove, by a preponderance of the evidence, that it would have taken the same action, or made the same decision, even in the absence of protected activity.

a. Tyree's overtime

Tyree has been employed by the Respondent for more than 20 years. She was still working for the Respondent when she testified at the hearing. At the time of the Union's campaign, she was a setup operator in the modification area, reporting to Supervisor Ewing. In July 2001, after Odorczuk was terminated, the Respondent promoted Tyree to cell leader to take over most of his duties, giving her a wage increase to go along with the additional responsibilities. Tyree's testimony and the Respondent's records establish that, before the Union's arrival on the scene, Tyree was regularly working overtime by coming into work up to 2 hours before the start of her shift. It is undisputed that this weekday overtime was worked on the hinge line, not Tyree's normal work area. She had also occasionally worked Saturday overtime, either on the hinge line or in her work area. She was one of only a few employees who were able to fill in on the hinge line when one of the employees assigned to that line was unavailable.

Tyree's first involvement with the Union was to attend the October 5 meeting at the Log House, where she signed the Union's authorization petition and volunteered for the organizing committee. Ewing admitted knowledge of Tyree's union activity by identifying her as one of the employees he saw congregating and talking during work time. Ewing acknowledged that he believed Tyree and the other employees were discussing the Union and that he complained to Blancato about this. Blancato also admitted knowledge of Tyree's involvement in the Union by corroborating Ewing's testimony about this complaint. Blancato's knowledge is further demonstrated by the conversation at her machine shortly after the union meeting when he asked her not to solicit on company time. When Tyree denied she was doing this, Blancato told her to tell whoever

about the Union or engaging in union solicitation and distribution violated Sec. 8(a)(3) in addition to Sec. 8(a)(1) (pars. 7(b), (h), 9(a), 10, and 11). The legality of these rules has already been discussed.

was doing it to stop. This is a clear indication of Blancato's belief that she had a key role in the organizing drive. Further evidence of this belief can be found in the conversation Blancato and Tyree had in his office after she became upset by the conversation at her machine. Based on her credited version of the conversation, it is clear that Blancato suspected that Tyree and her boyfriend were behind the union drive.

The Respondent's antiunion animus is established by the numerous violations of Section 8(a)(1) already found, including unlawful statements directed specifically at Tyree. It was against this background that Ewing told Tyree, shortly after the union meeting, not to come in before the 7 a.m. start of her regular shift. The Respondent's timekeeping and payroll records establish that, from October 10 through January 20, 2001, Tyree did not start work before 7 a.m. and, beginning with the first full pay period after the union meeting, she received no pay for overtime until January 2001. The Respondent's records also show, that during this same period, other employees with hinge line experience were working overtime.

Tyree testified that the only reason Ewing gave her for not letting her work overtime during the week was her refusal to work Saturday overtime on the hinge line. Tyree credibly testified that this refusal occurred several months before October 5. The Respondent's records support her testimony because they show that she had not worked a Saturday between July 31 and September 9. Moreover, she had worked the Saturday immediately after the union meeting and before Ewing took away her weekday overtime. Thus, there was no refusal to work overtime on her part in proximity to the denial of overtime.

The above evidence is sufficient to support the inference the General Counsel urges, i.e. that the Respondent was motivated by Tyree's involvement with the Union when it decided to take away the 1-2 hours of overtime she had been working on a daily basis during the week. This inference is also supported by Odorczuk's testimony that he was present when Abraham told Ewing, shortly after the Respondent became aware of the Union, that Tyree and Hank Archambault were not to work any more overtime. Although I found Odorczuk's testimony not entirely credible, this portion of his testimony is corroborated by the Respondent's own records which show that neither Tyree nor Archambault received overtime for a significant period after the October 5 union meeting despite both having regularly worked overtime before. As previously noted, Archambault was also on the organizing committee and was one of the four employees about whom Ewing complained to Blan-

The Respondent did not deny that Tyree's overtime declined after October 5. The Respondent attempted to rebut the General Counsel's evidence by claiming that the only reason Tyree did not work overtime was because she declined it. I did not find Ewing's testimony in this regard to be credible. Ewing acknowledged that Tyree only refused to work Saturday overtime if she was going to have to work on the hinge line. There is no evidence that Tyree ever refused to work overtime by coming in early, as she had been doing for some time. In addition, Ewing's certainty that Tyree's refusal to work Saturday overtime in October is suspect in light of his generally poor recollection of dates. This testimony is also contradicted by the fact that

⁵² Wright Line, 251 NLRB 1083 (1980), enfd. 622 F.2d 899 (1st Cir. 1980), cert. denied 455 U.S. 988 (1982). See also Manno Electric, 321 NLRB 278, 280 fn. 12 (1996).

Tyree worked the only Saturday in October that predated Ewing's denial of overtime.

Much of the Respondent's case is based on his argument that Tyree's testimony is not credible. I have previously noted Tyree's fragile emotional state and the fact that she broke down on the witness stand. This is not an indication that she was testifying untruthfully. Rather, it appears to be the result of the pressure Tyree was under having to testify adversely to her employer in light of everything that had already occurred during the Union's organizing drive. In addition, despite the efforts of the Respondent's counsel to confuse her, her testimony was consistent with her pretrial affidavit. Her testimony regarding other incidents during the union campaign was also consistent with the testimony of other witnesses. The Respondent also argues that it did not discriminate against Tyree because it granted her requests to take time off in October and November, and eventually offered her a promotion. I find this argument unpersuasive when considered against the strong evidence of antiunion motivation behind the denial of overtime. Taking away the extra income that Tyree earned by working overtime would have a greater negative impact than a refusal to let her take time off without pay. The promotion occurred after the General Counsel had issued a complaint against the Respondent naming Tyree as a discriminatee and was probably intended as damage control.53

I find, based on the above, that the Respondent has not met its burden of showing, by a preponderance of credible evidence, that Tyree would not have been assigned weekday overtime on and after October 10, in the absence of her union activity. Accordingly, I find that the denial of overtime was discriminatorily motivated, in violation of Section 8(a)(3) and (1), as alleged in the complaint.

b. Pimentel's light-duty work

Pimentel had been employed by the Respondent for more than 3 years at the time of the union campaign. Although his regular job was as a shear machine operator, he had not worked this job since March 3 because of a work-related back injury. There is no dispute that Pimentel had been on light duty since March 3 with the exception of a brief period, shortly after the accident, when his doctor released him from any restrictions. Because his symptoms recurred, he was quickly placed back on light duty by his doctor. Like Tyree, Pimentel became involved in the union campaign by attending the October 5 meeting. signing the Union's petition and joining the organizing committee. Pimentel was the only bilingual employee on the organizing committee. The Respondent employed a number of Hispanic employees who spoke no English. Pimentel thus became their link to the Union and the Employer.⁵⁴ Pimentel testified without dispute that he obtained the signatures of 14 other employees on the Union's petition, all but 2 of whom were Hispanic. Blancato and Ewing admitted knowledge of Pimentel's participation in the early November attempt by a group of employees to present the Union's demand for recognition. In fact, it was Pimentel who spoke for the employees when they met with Ewing.

I have already credited Pimentel's testimony in part regarding his meetings with Blancato within a few days of the union meeting. I found above that Blancato created the impression of surveillance when he told Pimentel that he knew Pimentel was talking to other employees about the Union and he wanted him to stop doing this. I have also credited Pimentel's testimony that Abraham told him not to speak to employees about the union. These unfair labor practices establish the Respondent's knowledge and animus toward Pimentel's union activities. Although I found Pimentel's testimony regarding threats allegedly made by Blancato to be unreliable as a basis for finding an unfair labor practice, I did credit Pimentel to the extent that I believe the topics he described regarding the adverse consequences of unionization did come up during his meetings with Blancato. One of these topics was the fact that Pimentel was currently on light duty.

There is no dispute that Abraham sent Pimentel home on November 15 after he brought in a new doctor's note advising, inter alia, that Pimentel "avoid prolonged postures." I credit Pimentel's testimony that Abraham told him he did not have a 40-hour light-duty job for him because of the new limitation. I credit Pimentel further that Abraham told him to go home, collect worker's compensation and not return until his doctor said he could return to full duty. This occurred the day after the Respondent entered into a stipulated election agreement with the Union and less than 2 weeks after Pimentel and the other employees were rebuffed in their attempts to present the Union's demand for recognition. Based on the Respondent's knowledge and animus and the timing, I find that the General Counsel has established that Pimentel's union activity was a motivating factor in the Respondent's decision to send Pimentel home in response to the November 14 doctor's note. In reaching this conclusion, I also note that Pimentel's testimony that he was already avoiding prolonged postures while doing his current light-duty job was corroborated by other employees who had no reason to lie and by Ewing himself, who acknowledged that Pimentel was already permitted to stand and stretch as

The Respondent attempted to rebut the General Counsel's evidence of motivation by claiming that the November 14 doctor's note was such a significant change from Pimentel's prior restrictions that it had no choice but to send him home. This argument, and the testimony of the Respondent's witnesses on this point, might have been credible had the Respondent taken any steps to clarify the restriction. The Respondent's knee-jerk reaction to Pimentel's note stands in contrast to the policy enunciated by Abraham that the Respondent will ordinarily make every effort to accommodate a medical restriction. The Respondent's conduct toward Pimentel is also inconsistent with its history of accommodating other employees with even more restrictive limitations. Finally, Abraham himself conceded that there are many easy jobs at the Respondent's plant, including some where an employee need do no more than push a button and watch as the machine operates. No explanation was given

⁵³ I also note, in a similar vein, that Tyree began receiving overtime again after the Union amended it's first charge, on January 8, 2001, to specifically allege the denial of overtime to Tyree as an unfair labor practice.

⁵⁴ The Respondent did not have any Spanish translator available at Blancato's and Spencer's meetings with the employees.

why Pimentel could not stand or sit as he watched such a machine. I discredit Abraham's testimony that he met with Blancato and Murphy to explore how to accommodate Pimentel's new restriction because neither Blancato nor Murphy corroborated him on this issue. The conclusion is inescapable that, in the absence of Pimentel's union activity, the Respondent would not have so readily sent him home at the first indication that his physical limitations had changed. On the contrary, the Respondent seized upon this fortuitous event to remove from the plant a key member of the organizing committee, i.e., the only one who could keep the Spanish-speaking employees in the union fold, at a time when an election was imminent and the Respondent's antiunion campaign about to take off with captive audience speeches, posters, and literature.

Accordingly, I find that the General Counsel's case has not been rebutted and that the Respondent denied light-duty work to Pimentel and sent him home on November 15 because of his union activity, thereby violating Section 8(a)(3) and (1) as alleged in the complaint.

4. Pimentel's termination

The complaint that issued on November 15, 2001, in Case 34–CA–9829 alleges that the Respondent terminated Pimentel's employment on June 5, 2001, in violation of Section 8(a)(1), (3), and (4). The Respondent denied that it terminated Pimentel. According to the Respondent, Pimentel abandoned his job when he failed to maintain contact with the Respondent and accepted employment elsewhere. Under this view of the facts, the Respondent was not motivated by any union activity, or by the filing of unfair labor practice charges when it merely confirmed by letter that Pimentel had abandoned his job. The Board's *Wright Line* test also applies to the determination of this allegation of the complaint.

As found above, the Respondent unlawfully denied Pimentel light-duty work on November 15 and sent him home to collect worker's compensation benefits until he could return to full duty. The evidence above shows that, by November 24, Pimentel had reached maximum medical improvement in the opinion of his doctor, which left him with a permanent light-duty restriction. Because Pimentel had been told by Abraham not to come back until he could return to his old job on the shear machine, Pimentel had no choice but to look for work elsewhere. In fact, he was required to do this in order to continue receiving the temporary disability benefits he had been receiving from the Respondent's compensation carrier. His efforts proved successful and he obtained light-duty employment at a nearby factory, first through a temporary agency and then as a direct employee. There is no dispute that Pimentel did not communicate with the Respondent about these events. However, Pimentel could hardly be blamed for this in light of the manner and tone used by Abraham when he sent him home on November 15. It would have been reasonable for Pimentel to infer that the Respondent was not interested in hearing from him unless he could get a full release from his doctor, something he could not do because of the injury he had. I also note that Schaffer, who had been out of work due to a worker's compensation injury for some time at the time of the hearing, had never been told that he had to keep in contact with the Respondent.

There is no dispute that, on June 5, the Respondent notified Pimentel by letter that it had "terminated his insurance coverage immediately" based on the Respondent's assumption that Pimentel had abandoned his job. The Respondent also advised Pimentel in this letter of his right to continue insurance coverage under COBRA and of his option to close out his 401(k) account. Although the letter may not have explicitly said that Pimentel was terminated, the clear implication of the Respondent's actions described in the letter was that his employment had ended. When Pimentel was able to speak with Blancato about the letter, this implication was confirmed. Pimentel denied abandoning his job and told Blancato that he only did what Abraham told him to do. Then, when Pimentel asked Blancato directly if he still had a job with the Respondent, Blancato said, "No." To the extent there is any difference in the testimony about this meeting, I credit Pimentel. I find, contrary to the Respondent's argument, that the Respondent in fact terminated Pimentel on June 5. In determining whether an employee has been terminated, the Board considers whether the actions of the employer would reasonably lead an employee to believe he or she had been terminated. If an employer's actions create any ambiguity regarding an employee's status, the Board will resolve the ambiguity against the employer. Ridgeway Trucking Co., 243 NLRB 1048 (1979), enfd. 622 F.2d 1222 (5th Cir. 1980). Accord: MDI Commercial Services, 325 NLRB 53 (1997); Apex Cleaning Service, 304 NLRB 983 fn. 2 (1991); Express Messenger Systems, 301 NLRB 651 (1991).

Having found that the Respondent terminated Pimentel, I must determine whether the General Counsel has offered sufficient evidence to show that Pimentel's union activity was a motivating factor in that decision. I conclude that she has. I have already discussed the Respondent's knowledge regarding Pimentel's union activities and its animus toward the Union generally and Pimentel in particular. The circumstances which led to the Respondent's "assumption" that Pimentel had abandoned his job were created by the Respondent when Abraham sent Pimentel home and told him not to come back until he could work full duty. I have already found that this conduct violated Section 8(a)(1) and (3). When the Respondent formalized Pimentel's separation from employment on June 5, it was merely carrying to its logical conclusion Abraham's discriminatory action in November.

The Respondent counter's this evidence of an unlawful motivation by arguing that it was the information Murphy received in early June, that Pimentel was working elsewhere, which precipitated his "termination." The Respondent also argues that Pimentel's dishonesty when confronted with this by Blancato is further evidence that he would have been terminated even in the absence of union activity. The question here is whether the Respondent would have treated the information uncovered by Murphy the same had Pimentel not been a key union organizer. The fact that Pimentel was working was not a secret. The Respondent's compensation carrier was aware of it. If the Respondent truly suspected that Pimentel had abandoned his job, it only had to ask him. When given the opportunity, he clearly told Blancato that he had not abandoned his job. Because Abraham was still the Respondent's plant manager at the time, and he was the one who sent Pimentel home, any confusion or misunderstanding could have been quickly resolved. The fact that Blancato told Pimentel that he did not have a job even after Pimentel denied abandoning his job shows that the true motivation was the Respondent's desire to finally rid itself of a union activist. The fact that some time had passed since the election was cancelled in December is immaterial. At the time Pimentel was terminated, the instant charges were pending, including the allegations regarding Pimentel. Within 2 weeks of June 5, the first complaint issued against the Respondent. The Respondent certainly was aware when it terminated Pimentel of the possibility of a revived campaign if the Union's charges were found meritorious. Thus, the Respondent had reason to want Pimentel gone for good.

Pimentel admitted that he lied to Blancato when asked, during their meeting in June, if he was working elsewhere. Although such conduct is not to be condoned, I find it is not egregious enough to deny Pimentel a remedy under the Act. As previously noted, it is the Respondent who placed Pimentel in the position of having to find work elsewhere. Pimentel may have believed that the Respondent was going to terminate him if he had another job. Certainly, that is what the June 5 letter indicated. His initial denial, when confronted by Blancato, is understandable in this context. Moreover, the Respondent had already made a decision to terminate Pimentel before Pimentel's act of dishonesty. The Respondent can not escape liability for its own unlawful conduct by shifting the focus to some misconduct by Pimentel.

Accordingly, I conclude that the Respondent violated Section 8(a)(3) and (1) of the Act by terminating Pimentel on June 5, 2001. The Section 8(a)(4) allegation is based solely on the fact that the Union had filed charges naming Pimentel as a victim of unfair labor practices before the Respondent decided to terminate him. There is no evidence to show that it was Pimentel's involvement in the charges that motivated the Respondent's action. Accordingly, I shall recommend dismissal of the 8(a)(4) allegation.

5. Appropriateness of a bargaining Order under Gissel

a. The Union's majority status

The Respondent and the Union stipulated, in the representation case, that the following unit of employees is appropriate for purposes of collective bargaining:

All full-time and regular part-time production and maintenance employees, shipping and receiving employees, production clerk, truck driver and technician employed by the Respondent at its 150 Price Road, Winsted, Connecticut facility, but excluding all other employees, temporary employees, office clerical employees, professional employees and supervisors and guards as defined in the Act.

At the hearing, the parties stipulated to the identity of 78 employees who were employed in the above unit on November 3, the date the employees attempted to present the Union's demand for recognition to Blancato. As previously noted, the showing of interest filed by the Union with its representation petition had 48 signatures, all dated between October 5 and November 2. Discounting the duplicate signatures of Henry Archambault and Jaroslaw Ogniewski leaves the Union with 46

signatures as of November 3. These 46 employees were on the Respondent's payroll on that date.

The testimony of the General Counsel's witnesses is sufficient to authenticate their own signatures and the signatures of other employees whom they witnessed signing the petition. A total of 25 signatures are authenticated by such eyewitness testimony. 55 This includes the 14 signatures solicited by Pimentel, whose testimony in this regard I have credited. Moran's conflicting and uncorroborated testimony as to one of the employees solicited by Pimentel, i.e., Kurt Parsons, is discredited. I note that, regardless of who solicited Parsons, his signature on the Union's petition is identical to what purports to be his signature on Thibodeau's petition and on his W-4 maintained in the Respondent's personnel records. I have compared the remaining 26 signatures on the Union's petition with the signatures of these employees on the W-4 and, when available I-9, forms maintained by the Respondent. I have also compared the signatures on the Union's petition to those of the same employees that appear on Thibodeau's petition.⁵⁶ Although I am not a handwriting expert, the signatures on the Union's petition all appear to be authentic. The Board has held that an administrative law judge may determine the genuineness of signatures on authorization cards by comparing them to W-4 forms in the employer's records. Part's Depot, Inc., 332 NLRB 670 (2000), and cases cited therein.

The Respondent attempted to show, during its cross-examination of the General Counsel's witnesses, that the employees who signed the Union's petition were told the purpose was to get an election. I found the testimony of Becotte and Schaffer regarding what was said at the October 5 meeting credible. I also credit Pimentel regarding what he told the employees whom he solicited. The Respondent offered no testimony of employees to contradict these witnesses. Accordingly, I find that the Union did not tell any of the employees that the sole purpose of their signature on the petition was to get an election. The Respondent has not offered any other reason to discount the signatures of these employees as an uncoerced expression of their desire for union representation at the time they signed.

Accordingly, based on the above, I find that the Union had obtained the support of a majority of employees in the unit by November 3.

b. Is a bargaining order warranted?

The Board's test for evaluating the appropriateness of a bargaining order as a remedy for an employer's preelection unfair labor practices has been stated as follows:

In Gissel, supra, the Supreme Court "identified two types of employer misconduct that may warrant the imposition of a bargaining order: 'outrageous and pervasive unfair labor practices' ('category I') and 'less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process' (category II)." The Court found that, in determining a remedy in category II cases, the Board can take into consid-

⁵⁵ See pp. 4–5, supra.

⁵⁶ 26 employees signed both petitions.

eration the extensiveness of an employer's unfair labor practices in determining whether the "possibility of erasing the effects of past practices and ensuring a fair election . . . by use of traditional remedies, though present, is slight and employee sentiments once expressed by authorization cards would, on balance, be better protected by a bargaining order."

Michael's Painting, Inc., 337 NLRB No. 140 (2002), and cases cited therein. See also Part's Depot, Inc., supra; Sheraton Hotel Waterbury, 312 NLRB 304 (1993), enf. denied sub nom. J.L.M., Inc. v. NLRB, 31 F.3d 79 (2d Cir. 1994). Among the factors considered by the Board when applying this test are the number of employees directly affected by the unfair labor practices, the size of the unit, the extent of dissemination among employees, and the identity and position of the individuals committing the unfair labor practices. Garvey Marine, Inc., 328 NLRB 991, 993 (1999). The Board must also be mindful of the important congressional policy underlying the Act which favors employee free choice of a bargaining representative through a secret-ballot election conducted under the Board's auspices. A bargaining order in the absence of such an election remains an extraordinary remedy applied only in unusual cases. J.L.M., Inc. v. NLRB, supra; NLRB v. Jamaica Towing, Inc., 632 F.2d 208 (2d Cir. 1980).

I find, initially, that the instant case is not a category I case because the unfair labor practices found here are not so outrageous or pervasive to render the Board's traditional remedies totally meaningless. Because this is a category II case, I must consider the nature and severity of the violations found above and decide whether, under all the circumstances, application of the Board's traditional remedies for such violations would eliminate the possible effects they would have on the employees' ability to exercise a free choice in an election. This inquiry is not mechanistic, but requires consideration of the specific facts of this case. Scott ex rel. NLRB v. Stephen Dunn & Associate, 241 F.3d 652, 654 (9th Cir. 2001).

The Respondent's unlawful conduct in the instant case began almost immediately after it became aware that its employees had contacted a union about representing them. The Respondent committed several "hallmark" violations that the Board has considered sufficient to justify a bargaining order.⁵⁷ Within a week of employees signing a petition for the Union, Blancato, the Respondent's president, orally promulgated overly broad and discriminatory rules prohibiting employees from engaging in union activity and made statements to several employees creating the impression that their activities were under surveillance. Later, Blancato implicitly threatened employees with plant closure and job loss in the course of his captive audience speeches in late November early December. The Board has historically found that the coercive effect of unfair labor practices is heightened when the misconduct is committed by top management officials and commences rapidly after the employer learns of union activity. Carter & Sons Freightways, Inc., 325 NLRB 433 (1998). The threat implicit in Blancato's speeches, suggesting that selection of the Union would result in plant closure and job loss, was emphasized by other conduct, such as the timing of the Respondent's removal of the EN-114 machine and the statements of its plant manager about the move, and the use of a poster that graphically depicted closed factories where the employees had been represented by the Union or one of its affiliates. The Board has found that threats of plant closure and job loss are more likely to destroy election conditions for a longer period of time than other unfair labor practices. A.P.R.A. Fuel, Inc., 309 NLRB 480, 481 (1992), enfd. mem. 28 F.3d 103 (2d Cir. 1994). See also Grieg's Dump Trucking, 320 NLRB 1017 (1996), enfd. 137 F.3d 936 (7th Cir. 1998); O-1 Motor Express, 308 NLRB 1267 (1992), enfd. 25 F.3d 473 (7th Cir. 1994). The Respondent also granted a wage increase to the employees on third shift on November 13. Other employees, who were told in October and November that they could expect a wage increase as a result of the Respondent's revival of its dormant employee review process, were told in December that all wage increase or other benefits were frozen because of the union campaign. These same employees ultimately were granted wage increases 5 or 6 months after the election was canceled. The Board has found that the grant of benefits during a preelection period has a particularly longlasting effect on employees that is difficult to remedy by traditional means. The continuing receipt of such benefits would serve as a reminder to employees that the employer, not a union, is the source of such benefits. Grieg's Dump Trucking, supra: Skyline Distributors, 319 NLRB 270 (1995), enfd, 99 F.3d 403 (DC Cir. 1996): Tower Records, 182 NLRB 382 (1970). The "carrot and stick" approach utilized by the Respondent here with respect to the employees' annual reviews has been found particularly egregious. America's Best Quality Coatings Corp., 313 NLRB 470, 472 (1993). Finally, the Respondent discriminatorily denied overtime to one member of the Union's organizing committee, and denied light-duty work and terminated another, in violation of Section 8(a)(3) of the Act

The Respondent's unfair labor practices are of the type that have been found sufficiently serious to support a bargaining order. However, this does not mean that a bargaining order is the only remedy for such violations. Were that the case, it would no longer be an extraordinary remedy. The Respondent's misconduct occurred in a large bargaining unit consisting of 78 employees. Only one of the hallmark violations was directed at the entire unit, i.e., Blancato's implied threat of plant closure and job loss conveyed to employees at the captive-audience meetings and by the poster prominently displayed in the plant. The increase in the shift differential affected only six employees. The Respondent's promise to revive the dormant employee review process and grant wage increases, which theoretically would cover all employees, has only been shown to have affected about one-third of the unit. Blancato's October 20 memo to the supervisors identified only 29 employees as in need of a review and possible wage increase. There is no evidence that these 29 employees even knew that such a memo existed. The record does show that nine employees received reviews in October and November. These nine employees had their raises

⁵⁷ The Second Circuit defined "hallmark" violations as those regularly regarded by the Board and the courts as highly coercive, including such conduct as threats of plant closure or job loss, the grant of benefits to employees and discriminatory actions taken against union adherents. *NLRB v. Jamaica Towing, Inc.*, 632 F.2d at 212–213.

withheld until the following spring, a period of almost 6 months. However, there is no evidence that all nine employees were either promised raises in the fall or told that the raises they received in the spring were linked to the union campaign. In fact, only two witnesses. Winegar and Thibodeau, testified that they were promised a wage increase. Although these same two witnesses and Schaffer testified that they were later told that the Respondent could not give raises or any other benefits because of the Union, there is no evidence that these statements were disseminated to other employees. Blancato's oral promulgation of unlawful rules and his statements creating an impression of surveillance were directed at two or three employees. No more than a handful of employees heard Abraham's comments linking removal of the EN-114 machine to the onset of the Union's campaign. Only two union adherents have been shown to have been discriminated against and only one was terminated, 6 months after the canceled election. These facts distinguishthis case from those where a bargaining order has been deemed necessary to extinguish the lingering effects of an employer's unfair labor practices.

A review of the multitude of cases in which the Board has considered this issue indicates that the Board is more likely to grant a bargaining order in a small unit than a large one. Those cases involving large units where a bargaining order has issued involve far more pervasive and devastating unfair labor practices, such as mass layoffs, discharges of a number of key union adherents or across the board wage increases or other benefits affecting the entire unit. See Parts Depot, Inc., supra; Burlington Times, Inc. 328 NLRB 750 (1999); Sheraton Hotel Waterbury. See also Scott ex rel. NLRB v. Stephen Dunn & Assoc., 241 F.3d 665. The one widely disseminated threat here. i.e., Blancato's threat of plant closure and job loss, although serious, was not a direct plant closing threat. The Respondent's unlawful conduct here was much more subtle. Blancato, unlike the management officials in most of the bargaining order cases, did not tell employees that the Respondent would close if they voted for union representation. Instead, by words and actions, he planted in the minds of the employees an implication that a vote for the Union would jeopardize their employment. It is possible to remedy the effects of this type of violation by use of traditional remedies adapted to the circumstances here. Thus, I shall recommend that the Respondent be required to post a notice and to have Blancato read the notice to the employees at captive audience meetings similar to the ones he held in November and December. In this way, the employees will hear directly from the individual who first threatened them that he was wrong to imply that their vote for the Union would threaten their job security.

Accordingly, based on the above, and in light of the facts of this case, I do not find that a *Gissel* bargaining order is the only effective remedy for the Respondent's unfair labor practices. I find, on the contrary, that the effects of the Respondent's unfair labor practices can be remedied through use of traditional remedies tailored to the facts and that a fair election can occur once those unfair labor practices have been remedied.

CONCLUSIONS OF LAW

- 1. By promulgating overly broad and discriminatory solicitation and distribution rules, including rules prohibiting employees from discussing the Union at work, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act
- 2. By creating the impression that employees' union activities are under surveillance; by threatening employees with plant closure, job loss and other unspecified reprisals; by threatening to and withholding wage increases from employees; by making implied promises to improve benefits and by granting increased wages, the Respondent has interfered with, restrained, and coerced the employees in the exercise of their Section 7 rights and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
- 3. By denying overtime to Roberta Tyree and by denying light duty to and terminating the employment of Viterbo (Tony) Pimentel because Tyree and Pimentel engaged in activities on behalf of the Union, the Respondent has discriminated against its employees and engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.
- 4. The Respondent has not violated the Act in any other manner alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent must rescind the overly broad and discriminatory rules promulgated during the union campaign that prohibit its employees from engaging in union solicitation and distribution and from discussing the Union at work. In order to remedy its discriminatory denial of overtime to Tyree, I find that the Respondent must be ordered to make her whole for any loss of earnings suffered as a result of its failure to assign her weekday overtime on and after October 10, 2000. Because the Respondent discriminatorily denied Pimentel light-duty work on November 15, 2000, and terminated him on June 5, 2001, the Respondent must be ordered to offer him reinstatement to his light-duty job and to make him whole for any loss of earnings and other benefits, computed on a quarterly basis from November 15 to the date of proper offer of reinstatement, less any net interim earnings, as prescribed in F. W. Woolworth Co., 90 NLRB 289 (1950). Because I have found that the Respondent withheld raises from a number of employees in response to the union campaign, the Respondent must make these employees whole for any wages they lost as a result. Although the precise identity of all the employees affected by this particular unfair labor practice is not known, the Respondent must make whole at least those nine employees who received satisfactory performance reviews in October-November 2000 but did not get a wage increase until April 2001 or later. Whether any of the other 20 employees identified in Blancato's October 20, 2000 memo are entitled to backpay for any wage increase they should have received at that time

can be determined during the compliance stage of these proceedings. The make-whole remedies for Tyree, Pimentel, and any other employees shall include interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition to the above actions and other customary remedies for the violations committed here, I shall also recommend that the Respondent's president, Joseph Blancato, read the notice to the employees at a meeting or meetings scheduled to ensure the widest possible attendance. Because the record reveals that the Respondent employs a number of employees who speak and understand little or no English, I shall recommend that the notices be posted in English, Spanish, and Polish and that the Respondent have Spanish and Polish interpreters at the meetings to translate as Blancato reads the notice to the employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵⁸

ORDER

The Respondent, Homer D. Bronson Company, Winsted, Connecticut, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Promulgating and maintaining overly broad and discriminatory solicitation and distribution rules, including rules prohibiting employees from discussing the Union at work.
- (b) Making statements to employees that create the impression that their union activities are under surveillance.
- (c) Threatening employees with plant closure, job loss and other unspecified reprisals if they select the United Automobile, Aerospace & Agricultural Implement Workers of America, Region 9A, AFL–CIO (the Union), or any other labor organization, as their collective-bargaining representative.
- (d) Threatening to and withholding wage increases from employees because they sought union representation.
- (e) Making implied promises to grant raises and otherwise improve benefits if employees reject the Union as their bargaining representative.
- (f) Granting increased wages to employees in order to interfere with, restrain or coerce them in their choice of a bargaining representative.
- (g) Denying employees overtime or light-duty work because they joined, supported, or assisted the Union.
- (h) Discharging or otherwise discriminating against any employee for supporting the Union or any other labor organization.
- (i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Rescind the overly broad and discriminatory rules promulgated during the union campaign that prohibit employees
- ⁵⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- from engaging in union solicitation and distribution and from discussing the Union at work.
- (b) Within 14 days from the date of this Order, offer Viterbo Pimentel full reinstatement to his former light-duty job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (c) Make Pimentel whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.
- (d) Within 14 days from the date of this Order, remove from its files any reference to Pimentel's unlawful discharge, and within 3 days thereafter notify Pimentel in writing that this has been done and that the discharge will not be used against him in any way.
- (e) Within 14 days from the date of this Order, make Roberta Tyree whole for any loss of earnings suffered as a result of the discriminatory denial of overtime, which began on or about October 10, 2000, in the manner set forth in the remedy section of the decision.
- (f) Within 14 days from the date of this Order, make whole any employees who were denied wage increases in fall 2000 because of the union campaign in the manner set forth in the remedy section of the decision.
- (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (h) Within 14 days after service by the Region, post at its facility in Winsted, Connecticut, copies of the attached notice marked "Appendix."59 Copies of the notice, in English, Spanish, and Polish, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 5, 2000.
- (i) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employ-

⁵⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ees by the Respondent's president, Joseph Blancato, with translation available for Spanish- and Polish-speaking employees.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. October 10, 2002

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT create the impression that we are watching out for your activities on behalf of United Automobile, Aerospace & Agricultural Implement Workers of America, Region 9A, AFL-CIO (the Union), or any other union.

WE WILL NOT prevent you from talking with one another about the Union, or prevent you from asking other employees to support the Union.

WE WILL NOT promise you raises and improved benefits to get you to stop supporting the Union.

WE WILL NOT threaten you with job loss and the closing of our facility if you support the Union.

WE WILL NOT move machines out of our facility and tell you we are doing this because you support the Union.

WE WILL NOT give you wage increases in order to convince you not to support the Union.

WE WILL NOT take away your overtime or light-duty work because you support the Union.

WE WILL NOT fire you because you support the Union.

WE WILL NOT in any similar manner interfere with, restrain, or coerce you in the exercise of your rights under Federal labor law

WE WILL return Viterbo (Tony) Pimentel to his former lightduty job and make him whole for any wages and benefits he lost because we denied him light-duty work and fired him.

WE WILL make Roberta Tyree whole for any wages she lost because we denied her overtime.

WE WILL make whole any of you who lost wages because we held back on giving you your wage increases during the union campaign.

HOMER D. BRONSON COMPANY